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1 (August 19, 2019; 1:34 p.m.)

2
3 P R O C E E D I N G S
4

5 THE CLERK: Your Honor, this is the time set for a
6 pretrial conference in civil case 17-2035-HZ, Sponer versus
7 Equifax Information Services LLC, et al.

8 Can I have counsel in court please identify yourself
9 for the record?

10 MR. FULLER: Mike Fuller for plaintiff.

11 MR. JONES: Kelly Jones for plaintiff.

12 MR. SOLA: Robert Sola for plaintiff.

13 MR. SAND: Jeff Sand for plaintiff.

14 MR. PETERSON: Dan Peterson for defendant.

15 MR. FRANSEN: Tim Fransen for defendant.

16 MS. SMITH: Julie Smith for the defendant.

17 MR. SABIDO: And Robert Sabido for the defendant.

18 THE COURT: Good afternoon.

19 So you all sent me a bunch of stuff. I spent a bunch
20 of time reading all the bunch of stuff you sent me.

21 What I want to do is go through your motions in limine
22 first, and then we'll talk about some of your other motions. I
23 think I'll turn then to exhibits, and then we'll talk about
24 witnesses after that. And then -- but wait. There's more.

25 You all filed additional motions regarding amending

1 the complaint, and then there was a defense motion to supplement
2 an exhibit list that we should talk about, and then we'll see
3 what other kinds of cleanup things that we need to talk about.

4 And then at the very end, I'll kind of describe for
5 you what my expectations are regarding the trial and what I
6 expect it to look like when we get to that place next week.

7 Is that right?

8 MR. PETERSON: Yes, Your Honor.

9 THE COURT: Next Tuesday?

10 We're scheduled for four days, Tuesday through Friday.
11 Given the number of witnesses I see you all have listed, you are
12 going to have to become very efficient in processing all those
13 witnesses. But we'll talk about that more a little later.

14 The way I want to do the pretrial conference this
15 afternoon is, rather than hear a bunch of argument from you
16 given the amount of time that I've already spent with your
17 documents, is just tell you what I plan to do with each of the
18 issues that have been raised before this Court.

19 Before I do that, I want to give you a couple of
20 asterisks.

21 I'm ruling based on what you are telling me is going
22 to be happening during the course of the trial. In my
23 experience, what you think is going to happen at trial and what
24 actually happens at trial is often different. Trials are
25 dynamic and fluid, and it doesn't always work precisely like the

1 parties think it does or will, and I'm ruling based on the
2 information I have today.

3 It may be during the course of the trial that I have
4 told you previously that a particular piece of evidence is not
5 admissible or won't be received, but something has happened
6 during the course of the trial that might change my perspective.
7 And to the extent that you think that a door which I had
8 previously closed has now been opened, feel free at that time to
9 say "I have a matter for the court," and I'll send the jury out
10 and reassess whether or not my original ruling still holds.
11 Okay?

12 Then let's get to the motions in limine.

13 I want to begin with plaintiff's motions in limine.
14 The first one was plaintiff's motion in limine 1, to exclude
15 testimony, evidence, or reference to settlements with or claims
16 plaintiff made against Equifax.

17 Again, this is one of those things where I'm operating
18 in a bit of a vacuum because I don't know exactly what the
19 defense is planning to do around that.

20 So let me explain it this way: To the extent that the
21 plaintiff's experience with Equifax was causing distress and
22 emotional disturbance, that evidence is evidence the jury is
23 allowed to consider.

24 Now, the terms of the settlement, on the other hand, I
25 agree with the plaintiffs, are not relevant to this particular

1 case and should not be received in evidence or offered by the
2 defense.

3 Beyond that, I can't give you much more guidance. But
4 for now, that's all I've got because I'm not exactly sure how
5 the questions are going to come in, and I'm not exactly sure how
6 the plaintiff is going to respond to those issues.

7 But as regards to emotional distress, that is
8 relevant, and you're free to inquire regarding that complaint,
9 lawsuit, whatever it was, with Equifax on that -- for that
10 particular purpose.

11 MR. SOLA: Your Honor, if I may be heard. It's more
12 of a clarification. Because the way they said they oppose, they
13 said they oppose insofar as it seeks to prohibit Wells Fargo
14 from arguing damages caused by Equifax. And you -- we don't
15 disagree with that, and that sounds to me like your ruling.

16 And you mentioned a settlement shouldn't come in, and
17 I think the only other thing we're asking is that -- what
18 doesn't come in is that he filed a lawsuit against Equifax.

19 THE COURT: I think they're going to know that because
20 of the name of this lawsuit.

21 MR. SOLA: Well, we actually would like to change
22 whatever pleadings there are to reflect Wells Fargo. But
23 we don't think that's relevant. The issue of damages, we agree
24 with the Court, that they're entitled to say Equifax caused you
25 damage. But we would like it be excluded, the claim,

1 that -- the fact that he made a claim.

2 THE COURT: Again, it's a little bit hard for me to
3 kind of separate those things out. The fact that he was engaged
4 in a lawsuit and litigation with Equifax is part of the
5 emotional distress that he's suffered. That's fair game on the
6 part of the defense. And I don't -- I'm operating in a vacuum.
7 I don't know the answer to that.

8 MR. SOLA: Can I -- well, actually, that's post his
9 damages, that lawsuit, slightly. I mean, they fixed the problem
10 in January of -- very end of January of 2018. He filed his
11 lawsuit in December 2018. So we definitely want to claim at
12 least that month of damage.

13 But, in other words, there really -- in terms of the
14 litigation, we're not claiming any damage from the litigation,
15 and that's what I think you just said, that there would be
16 stress from the litigation with Equifax.

17 THE COURT: Precisely. I don't know the answer to
18 that question. You're telling me that the litigation ended in
19 January, but at that -- at least they get up through January in
20 that case, assuming that the litigation with Equifax was causing
21 him some level of emotional distress.

22 And this is the problem with motions in limine of this
23 sort because I'm operating in a vacuum. I don't know the answer
24 to that question.

25 So right now, they get up through January. We'll put

1 it at that as regards Equifax and its litigation.

2 Let's move on.

3 Number 2, plaintiff's motion to exclude any testimony,
4 evidence, or argument by Wells Fargo in support of any defense
5 based on Wells Fargo's request to plaintiff that he provide
6 certain documents, that motion is denied.

7 Number 3, plaintiff's motion to exclude testimony of
8 any witness who lacks personal knowledge of matters testified
9 to.

10 I'm not, again, quite sure what information or
11 statements are being anticipated on the part of the plaintiff.
12 So I'll just say I'm going to reserve ruling on that, and if you
13 want to make an objection in the course of the trial because
14 somebody doesn't have personal knowledge, make your objection
15 and I will rule at that time. I'm sorry I can't be more helpful
16 because I don't really know which statements you are referring
17 to.

18 The next one, plaintiff's motion in limine number 4,
19 to exclude testimony of any witness who has not been -- excuse
20 me -- opinion testimony of any witness who has not been
21 designated and admitted as an expert witness.

22 So witnesses who are going to testify about the way
23 Wells Fargo does business, the normal procedures, they do not
24 need to be an expert witness. And it may include some opinion
25 because they're saying, "I can't tell you in this case, but this

1 is generally how we do it." That's admissible evidence if
2 that's what you're trying to get at. To the extent that that's
3 what the objection is, it's overruled. If there's some other
4 opinion evidence that you think is inappropriate for a
5 particular witness to be testifying about, raise it at trial.
6 I'll rule at the time.

7 MR. SOLA: Your Honor, if I could be heard.

8 THE COURT: Sure.

9 MR. SOLA: We're not claim- -- we're not asking that
10 they can't talk about procedures they know. What we're asking,
11 they can't give an opinion about, like, reasonableness or
12 necessity or adequacy of those procedures. That's really -- we
13 believe that's expert testimony for them to give -- you know, as
14 to the quality of the -- they can say what they are and why they
15 have them, but we don't want them to give an opinion, right,
16 because what they are and why they have them is fact,
17 characterizing them would be opinion.

18 THE COURT: Are you seeking out the opinions of your
19 fact witnesses to say this is a reasonable --

20 MR. PETERSON: No, Your Honor. I think what we're
21 getting at here would be a fact witness saying here's the
22 policies and procedures we have, so in this hypothetical
23 situation, this is how I would deal with it, exactly as you
24 expressed from the bench. I think that's the testimony we're
25 looking at providing.

1 THE COURT: Okay. You're both talking about two
2 different things as I'm listening to this, and what you're
3 suggesting is acceptable. It is also objectionable if they
4 start talking about the reasonableness of the procedure itself.

5 MR. PETERSON: Thank you, Your Honor.

6 MR. SOLA: Well, Your Honor, in their response, they
7 said they want to offer opinion testimony on its business
8 practices under hypothetical scenarios. That's -- that's about
9 the essence of an expert opinion.

10 THE COURT: Well, no. I disagree with you because it
11 could be, "Normally, how do you do this when this happens?" And
12 then they can say, "Our normal procedure is to do A, B, and C."
13 And somebody that's been doing this for 20 years and this is how
14 we handle this, gets to testify, "Normally, this is how we do
15 it."

16 And that -- if you're saying -- that, I guess, in some
17 ways is a hypothetical, and I don't think you need to be an
18 expert to testify as to kind of our normal processes and
19 procedures.

20 MR. SOLA: Okay. But if the -- I mean, why do we even
21 have hypotheticals when the only issue is whether they complied
22 with the procedures in regard to plaintiff's disputes? Right?
23 No other disputes are relevant. So I don't see how a
24 hypothetical is relevant at all.

25 THE COURT: It may or may not be. I can't answer that

1 question. I mean, that kind of gets us to a different place.
2 But I haven't heard the trial yet, so I don't know what the
3 facts are and I don't know what -- exactly how it's going to
4 unfold. There are circumstances where someone can say, "These
5 are what the normal procedures are. Did you do it in this
6 case?" "Yes, we did." Is that admissible? Of course it is.

7 MR. SOLA: All right. But I guess so then you do
8 grant my motion as far as no characterization of the procedures?

9 THE COURT: As to its reasonableness, yes.

10 I don't know. I don't know what I did. I don't know
11 if I granted or denied the motion. Honestly, I think maybe I
12 granted it in part and denied it in part.

13 MR. SOLA: I think that's true.

14 THE COURT: Okay. Let's say that, then. You get a
15 partial win on that one.

16 MR. PETERSON: So did we.

17 THE COURT: Yeah. Everybody wins.

18 All right. Where are we? What are we on? Number 5,
19 exclude testimony, evidence, or reference that attempts to blame
20 others for Wells Fargo's failure to comply with F-C-R-A, FCRA.

21 Again, this is that tough situation. To the extent
22 that what we're talking about is that mental distress was caused
23 by what was happening as a result of what other entities were
24 doing, the motion is denied. I will leave it at that, and you
25 can go ahead and raise whatever objection you have during the

1 course of the trial if it's something other than that.

2 MR. SOLA: Well, I'm -- you know, we made that very
3 narrow. It's not that they can't blame other people for causing
4 damage. What it is, is they can't blame other people for
5 causing them to not comply with the FCRA.

6 THE COURT: What are you anticipating?

7 MR. SOLA: Well, first, that they're going to blame
8 plaintiff because they're going say he didn't provide
9 information.

10 THE COURT: Yeah, but that's the whole issue that the
11 jury is going to have to decide is whether or not what they were
12 asking for was reasonable or not. And if you're telling me that
13 they don't get to do that as a matter of law, then make your
14 motion at halftime and I'll decide at halftime.

15 MR. SOLA: Okay. Yeah. I would like, when we
16 get -- I would like to address motion 2 maybe later. You did
17 deny it, but I would like to be heard. Or do you want to
18 address that now?

19 THE COURT: Go ahead.

20 MR. SOLA: Okay. So -- and this was narrow. This was
21 that we don't -- we're asking that they not be allowed to use as
22 a defense the plaintiff -- the request of plaintiff for
23 information and his not providing it, not -- and that's very
24 narrow.

25 In other words, as you know -- as you know from

1 reading the briefing, this is an s-2(b) claim, and under s-2(b),
2 the consumer disputes to the credit recording agency who then
3 makes a decision whether it's frivolous or irrelevant, and if
4 they decide it isn't, they forward it to the furnisher.

5 Under -- our point is, under s-2(b), the language says
6 they shall conduct an investigation. There's no exception,
7 there's no proviso that they can say, "Wait a minute, we want to
8 ask plaintiff for information before we do our investigation."

9 And, you know, the Sixth Circuit in *Boggio*
10 specifically said you can't require documentation from the
11 consumer before complying with s-2(b).

12 So our motion is very narrow. It's simply that they
13 can't say that as a defense. They can say, "We didn't have all
14 the information we wanted," or, "With the information we had, we
15 did a reasonable investigation." We're not saying they can't do
16 that. They can do that, and I know that's what they intend to
17 do.

18 What we're saying is they can't say, "Because
19 plaintiff didn't give us information, we didn't have to comply,
20 we didn't have to investigate any further than what we did."
21 And if they're allowed to do that, then basically you've amended
22 s-2(b) because --

23 THE COURT: Well, that's what I'm thinking. This is
24 an issue for jury instructions, isn't it?

25 MR. SOLA: Well, we do have a jury instruction on

1 that. But I -- their request for information was done pursuant
2 to s-2(a), which is a different section.

3 Okay. And one other point, they actually did not do
4 that in compliance with s-2(a). s-2(a) says, if they find a
5 dispute as frivolous or irrelevant -- this is the furnisher now
6 on a direct dispute -- they must notify the consumer of that
7 determination, and then they can ask for information. They
8 never notified him that they had determined his dispute was
9 frivolous or irrelevant.

10 So my point, Your Honor, is their defense isn't even
11 an s-2(a) defense, much less an s-2(b) defense, which doesn't
12 allow it. And if the Court allows them to get in that they
13 requested information, now plaintiff needs to point out that
14 they did not determine it was frivolous or irrelevant and, thus,
15 they had no right to ask him for information. And I don't know
16 we all want to go there.

17 We also have other provisions of s-2(a) that they did
18 not comply with. And they're opening the door to s-2(a), which
19 we think is improper, but if they do open that door, we should
20 be entitled to point out that they did not comply with s-2(a).

21 You know, you don't have to rule now. It's -- I find
22 it a complicated issue myself and I've been litigating these
23 cases for over 20 years. But that's our narrow motion, simply
24 that they not be allowed to raise it as a defense. And
25 that -- so I would ask that the Court withhold ruling on that,

1 or we would like more argument.

2 THE COURT: I don't want any more argument. I can
3 assure you of that.

4 What it seems to me, though, I don't know that that
5 makes any difference as to how the -- whether the evidence comes
6 in, at least as regards that question, that they -- that Wells
7 Fargo was doing whatever it was they did.

8 As to what that means ultimately, what the jury's
9 instructions -- we have a lot to talk about. But as regards am
10 I going to stop them from introducing evidence that Wells Fargo
11 was asking for information like a Social Security card? No, I'm
12 not going to stop them from doing that because, from their
13 perspective, that's what a reasonable investigation under
14 section (b) is, that that's part of a reasonable exercise and
15 ultimately the jury is going to have to decide whether that
16 makes any sense at all or not.

17 But that's for a conversation later. I have to decide
18 what evidence right now is going to be admitted. That evidence
19 is coming in.

20 We're at 5?

21 MR. SOLA: Yes, you just -- well, you just --

22 THE COURT: I addressed 5, did I not?

23 MR. JONES: Yeah. On to 6 now.

24 THE COURT: Okay. Evidence or reference about what
25 would have happened had plaintiff provided requested

1 information.

2 I mean, again, I think I've already addressed this,
3 and that is the plaintiff's witnesses can testify as to what the
4 normal procedures are. And other than that, you can go ahead
5 and raise your objections during the course of the trial. But I
6 am going to allow plaintiffs to tell us what their normal
7 procedures and processes are, and to that extent, the motion is
8 denied.

9 Number 7, "Exclude testimony, evidence, or reference
10 to actions or procedures of Wells Fargo's credit bureau dispute
11 resolution team or fraud department that were not disclosed
12 during discovery."

13 Do you have something in mind on this one?

14 MR. SOLA: Yes, Your Honor.

15 Actually, just a few days ago, Wells Fargo produced
16 written procedures related to their investigations that they
17 denied even existed in deposition. So that's a very clear
18 example of something that shouldn't be admitted, you know. And
19 we can go further but --

20 THE COURT: Those, we're going to talk about
21 specifically. Other than that, is there something -- in other
22 words, I'm kind of -- I'm working in a vacuum here because I
23 don't know, is there something you think they're going to do
24 that they haven't done that you want to me anticipate and tell
25 them not to do?

1 MR. SOLA: Okay. Well, that -- we did, and now it's
2 happened. Okay. So we did anticipate they would try to offer
3 new procedures, and they have.

4 THE COURT: Were you aware of those procedures?

5 MR. SOLA: No. No, Your Honor. I asked the
6 witness --

7 THE COURT: Hold on, hold on, hold on. If you weren't
8 aware of them, how do you expect me to be aware of them? In
9 other words, this is asking me to rule on advance that they're
10 going to do something, I don't know whether they're going to do
11 it or now. You see? You understand the trouble that I'm
12 having?

13 MR. SOLA: I do, Your Honor. But Rule 37 is very
14 clear. I mean, it's just sort of a basic rule of trial
15 evidence. Under Rule 37, if information is not disclosed, then
16 it can't be used at trial.

17 THE COURT: So your motion is make them follow the
18 rules?

19 MR. SOLA: That's right.

20 THE COURT: Oh, okay.

21 Follow the rules.

22 And we'll talk about that other -- the specific.

23 But, again, if you had a specific something that you
24 thought they were going to do, then I could address that. But
25 right now, it doesn't sound like you have any other idea of

1 something else that might -- that the defense might try to
2 introduce that is going to be a surprise to everybody.

3 MR. SOLA: No, I don't, Your Honor.

4 THE COURT: Okay. And we'll talk about the other one
5 in a minute or several minutes.

6 So on that one, I'm reserving ruling, because I don't
7 know what might happen during the course of the trial.

8 Plaintiff's motion to exclude testimony, evidence, or
9 reference to actions or investigations performed by Wells Fargo
10 employees or agents that were not disclosed during discovery.

11 This is kind of the same thing; right? Make them
12 follow the rules.

13 MR. SOLA: Well, this is more where they come in and
14 say, "Oh, we have -- you know, when we send this request out to
15 other consumers, they comply. You know, he was different, he
16 didn't give us something."

17 You know, they try to talk about other things that we
18 have no knowledge about that we can't check on that the jury
19 doesn't know the circumstances, you know, or other
20 investigations they have done where that's worked out fine for
21 the consumer. You know, bringing in all these things that don't
22 relate to his case.

23 THE COURT: Okay. Do you have you any reason that
24 they're going to do that?

25 MR. SOLA: Well, you know, I have seen this in other

1 cases where --

2 THE COURT: Okay. All right.

3 Are you planning on doing something like that on the
4 defense perspective?

5 MR. FRANSEN: No, Your Honor. No. Not intending to
6 talk about other consumers or other cases.

7 THE COURT: Okay. Your motion is granted.

8 Let's move to the defendant's motions in limine.

9 Motion to exclude evidence about the financial
10 condition, net worth, or income of the defendant.

11 Motion is denied.

12 Number two, defendant's motion to limit evidence of or
13 references to defendant's financial condition to its current
14 condition.

15 So I want -- this one I want to spend just a moment
16 talking about.

17 My understanding is that the parties reached an
18 agreement regarding the financial condition of Wells Fargo, and
19 that -- I don't remember the name of the expert that did the
20 financial evaluation -- but that individual issued a report and
21 both sides agreed that that was acceptable.

22 Am I saying that correctly?

23 MR. SOLA: Well, no. What we did, we hired an expert
24 on financials, and they hired a rebuttal expert. But before the
25 depositions took place, we reached a stipulation which basically

1 obviated the need for the experts and plaintiff to offer
2 exhibits. We were going to offer exhibits on their net worth
3 and income. We reached a stipulation, we used the current net
4 worth which is 2018. That's the most current.

5 So we don't disagree with motion 2, that it should be
6 current.

7 The second part of our stipulation was the income for
8 2018, 2017, 2016. And those are the most recent years. They
9 don't have any income for 2019.

10 And so we agreed -- because we agreed on that
11 stipulation, then plaintiff said, "We don't need an expert, we
12 don't need our exhibits, we got a stipulation on net worth and
13 income."

14 So we did not call our expert, we did not put him on
15 the list, we did not offer exhibits. And so we think that
16 there's really nothing left to decide except that they have to
17 abide by their stipulation.

18 THE COURT: Okay.

19 MR. PETERSON: Your Honor, I think this gets a little
20 bit to their objection to one of our witnesses, Mr. Santana, who
21 was the witness we had as the rebuttal. I'm happy to address
22 that now.

23 Mr. Sola is correct. We reached the stipulation on
24 what these dollar amounts would be, and our position is, if that
25 was admissible, we all agree those are the dollar amounts. You

1 have now ruled on motion 1 that those are admissible.

2 But our position with offering Mr. Santana
3 as -- initially as a rebuttal to Dr. Fruits, who was their
4 financial expert, our position is that those numbers -- again,
5 you've been talking about being in a vacuum. When you're
6 talking about these huge numbers with a national banking
7 association, it is difficult for the jury to take those numbers
8 in a vacuum and decide what they mean.

9 So the purpose of Mr. Santana's testimony is to help,
10 with his economic background, is to give some context to those
11 numbers, what does that mean for the purposes of a national
12 banking association.

13 So we believe that testimony, even though they have
14 withdrawn their expert, the testimony that gives the -- that
15 would have given the facts that we have now stipulated to, we
16 should still be allowed to rebut, or a better way to say it is
17 to provide context to those numbers.

18 So that's our position on Mr. Santana and then it
19 flows into your question here.

20 THE COURT: So tell me about Mr. Santana.

21 MR. SOLA: Okay. So as I indicated -- and let
22 me -- Mr. Santana was disclosed solely as a rebuttal expert to
23 our Dr. Fruits. Okay. We reached a stipulation and we are not
24 calling Dr. Fruits. So they -- there's no expert opinion to
25 rebut.

1 Again, he was not offered as an expert witness
2 initially. If he had been offered as an expert witness
3 initially, then we would have taken his deposition, we would
4 have been deciding whether to call a rebuttal expert to him.

5 But we withdrew our expert based on the stipulation.
6 And they say they want to call Mr. Santana to, I think, rebut a
7 stipulation of fact. Well, an expert witness doesn't rebut a
8 stipulation of fact. An expert witness -- a rebuttal expert
9 witness rebuts expert opinion. A stipulation of fact is not
10 expert opinion.

11 And let's look at what they're really trying to do,
12 Your Honor. They want Mr. Santana -- he says it himself, he
13 wants to talk about all the good things that Wells Fargo is
14 doing; affordable housing, combating climate change, you know,
15 and things that are totally unrelated to this case.

16 We would not seek to offer evidence of Wells Fargo's
17 unrelated bad acts. They filed a motion on that, and we have no
18 intent to do so.

19 But they shouldn't be allowed to provide Wells Fargo's
20 unrelated, quote, good acts through their witness.

21 A fact is not something to be rebutted. We had no
22 opportunity to hire an expert to rebut him, and it basically
23 undermines our stipulation. We withdrew our expert. We
24 withdrew our exhibits because we had a stipulation. There is
25 no -- there is nothing for Mr. Santana to rebut because we don't

1 have an expert witness.

2 THE COURT: Thank you.

3 Now, it's your turn.

4 MR. PETERSON: Briefly, Your Honor, we did reach a
5 stipulation that made Mr. Fruits' testimony unnecessary in their
6 opinion.

7 But, now, if you were to prevent us from calling
8 Mr. Santana, that would essentially penalize us for being
9 cooperative. I don't think that that is an appropriate way to
10 address that testimony.

11 THE COURT: I did have some questions about the
12 portions of his testimony where he's talking about all the
13 wonderful things that Wells Fargo has done and why that has any
14 relevance to this at all, and really it's really not rebutting
15 the value.

16 MR. PETERSON: Sure, and I think because the scope has
17 changed with the withdrawal of Dr. Fruits, I think -- I think
18 you're exactly right. We would be able to prevent -- present
19 rebuttal testimony on those -- those facts, and, like I said,
20 more explaining. I don't think -- based on the evidence that
21 will come in through the stipulation, I agree with you. I don't
22 think the good things are necessarily relevant to come from
23 Dr. Santana or Mr. Santana in that point so I don't disagree
24 with that, but I think being able to provide context to what
25 those numbers that what we stipulated to, what those mean, I

1 think that's relevant, appropriate, and will be helpful for the
2 jury.

3 THE COURT: All right. Thank you. As regards
4 Mr. Santana, the plaintiffs are telling me that you would have
5 taken his deposition if you had had an opportunity or inkling
6 that he was going to be called as a witness in this case?

7 MR. SOLA: If he had been disclosed as an expert which
8 they did with their other experts, yes, we would have taken his
9 deposition.

10 THE COURT: Yeah.

11 MR. SOLA: And we didn't have that opportunity, and
12 also, Your Honor, I want to point out, he goes way beyond -- he
13 starts talk about the amount of deposits and that they'd spent
14 considerable capital in areas of compliance. They -- they have
15 a certain amount of assets. It's really confusing. I mean,
16 you've done these cases. I've done these cases. What the court
17 admits is net worth and income, you know. The jury, to try to
18 color that and talk about how many depositors they have and all
19 these other things, it's not relevant. It's not the kind of
20 evidence that's submitted, but it's also very confusing to the
21 jury, too, you know. That's why you have financial people and
22 there's really no issue of what their worth is.

23 THE COURT: Thank you.

24 I'm going to hang on to that thought for a while.

25 What else do you want to tell me?

1 MR. PETERSON: May I just add one more thing?

2 Just to be clear, and I believe it's attached to
3 Mr. Sola's declaration, when we made the stipulation, it
4 was -- it was expressly acknowledged in that stipulation that we
5 would still intend to call Mr. Santana, and they reserved the
6 right to depose him even after the filing of these motions that
7 said, "We intend to call Mr. Santana," we've heard nothing from
8 them about trying to set a deposition.

9 So for them to now argue that there's some unfair
10 surprise about not being able to depose him is not well-taken.

11 THE COURT: Thank you. Let's move on.

12 Let's see. We were at defendant's 2.

13 MR. FULLER: Now we're on 3.

14 MS. SMITH: No, Your Honor, I don't believe I heard a
15 ruling on number 2, and just to clarify, the argument on
16 number 2 is that it should be limited to -- by current financial
17 condition, we mean 2018 numbers.

18 THE COURT: So as I understand the stipulation, it was
19 current financial conditions and then there was some other
20 evidence regarding 2016, '17, and '18; is that correct?

21 MR. SOLA: Yeah, so and we did agree that that net
22 worth was considered the current. So I don't think there's any
23 issue on currency and you've already ruled on the admissibility.

24 MS. SMITH: The issue is on currency is that plaintiff
25 seeks to put in net income numbers for other -- years other than

1 2018.

2 THE COURT: I thought that was your stipulation.

3 MS. SMITH: Well, the stipulation was to the fact not
4 to the admissibility, the scope that -- that's the distinction
5 I'm drawing here is that we did, we did stipulate to the facts,
6 but we didn't stipulate to the admissibility of those facts,
7 which is where our motion in limine number 1 and 2 come from.
8 There's a difference between stipulating to a fact and
9 stipulating to the admissibility of a fact.

10 THE COURT: Okay.

11 MR. SOLA: Your Honor, this was a stipulation of fact
12 for trial. And it's in -- it was not something in the ether.
13 This was to relieve us of the burden of having to offer other
14 evidence of their net worth and income.

15 So it was -- there was not a stipulation just of some
16 fact that might come in. Otherwise, we would have continued to
17 offer our exhibits and offer our expert testimony.

18 THE COURT: Thank you. Anything else?

19 MS. SMITH: Which we would have opposed.

20 THE COURT: Okay. So there a disagreement regarding
21 what the agreement was, as I understand it. The defendant 's
22 motion to limit evidence to references of its current condition
23 is denied. You can go ahead and go along with your
24 understanding of the stipulation, three years of income and
25 current year for net worth which is 2018.

1 Thank you.

2 Defendant's motion number 3, "Exclude evidence about
3 references to other bad acts past or present, other lawsuits,"
4 et cetera. Is the plaintiff planning on offering any of that?

5 MR. SOLA: We -- we may offer evidence of similar SRA
6 lawsuits based on similar conduct to prove --

7 THE COURT: It's going to have to be really similar so
8 before you do that, you give me a head's up and tell me you want
9 to go down that path.

10 MR. SOLA: I will, Your Honor.

11 THE COURT: And I will send the jury out, and I'll
12 give you a chance to argue it. Right now I'm not letting it in.
13 I'm reserving the ruling on that issue.

14 MS. SMITH: Reserving the ruling on that. Okay.

15 THE COURT: All right.

16 MS. SMITH: Okay. And it will be heard outside the
17 presence of the jury then if it comes up.

18 THE COURT: Yeah, it would be really silly if we put
19 it in front of the jury, wouldn't it?

20 MS. SMITH: Yes. Thank you.

21 THE COURT: All right. Thanks. Let's move on.

22 Defendant's motion in limine number 4, "Exclude
23 evidence about and references to whether defendant should have
24 or failed to apologize or acknowledged its alleged errors."

25 And, again, I'm not quite sure what it is we're

1 getting at here, but is the plaintiff intending on offering any
2 of that -- any such evidence.

3 MR. SOLA: Well, we do -- we do intend to offer the
4 evidence that they repeatedly, you know, denied that there was
5 identity fraud and they denied that they had violated the Fair
6 Credit Reporting Act and they denied that they did anything
7 wrong, but I wasn't going to say anything about apologizing.
8 But we were sort of going to do the corollary, that they always
9 denied that they did anything for which they should apologize.

10 THE COURT: Okay.

11 MS. SMITH: I think plaintiff's response to our motion
12 sheds some light on this. They indicate in their response that
13 whether an apology or admission would have lessened plaintiff's
14 stress, was -- would it be relevant, so they wanted to put on
15 that evidence to prove that it would have somehow lessened if
16 they had had an apology or some admission of fault earlier, it
17 would have lessened his stress.

18 THE COURT: They just told me they're not offering
19 anything about apology.

20 MS. SMITH: Okay. Well --

21 THE COURT: When you tell a federal judge that, I
22 expect you to live by your statements, and if you don't, I seek
23 ways to make you pay that aren't good. And he just told me he's
24 not seeking --

25 MS. SMITH: I will take his representation now then

1 as --

2 THE COURT: Also, what he did say, however, is that he
3 would bring out evidence that they denied -- that your clients,
4 Wells Fargo, has denied they had done any wrongdoing and not
5 admitted wrongdoing, I guess, would be another way to say it. I
6 don't have any problem with that.

7 MS. SMITH: Well, the other thing that we don't want
8 to see is we don't want to see them offering the prior answer,
9 assuming the court grants the motion to amend the answer, we are
10 admitting fault in part and our understanding was that plaintiff
11 intended to offer as evidence the prior answer.

12 THE COURT: Yeah, I typically don't allow pleadings to
13 go into evidence anyway. Okay?

14 MS. SMITH: Okay. Thank you.

15 THE COURT: Let's move on.

16 Defendant's motion in limine number 5, "Exclude
17 evidence about reference to attorneys' fees and costs." I think
18 we're all in agreement on that one. That motion is granted.

19 Number 6, "Exclude evidence about references to any
20 obligations defendant might have beyond obligations triggered by
21 ACDVs if received." Is this going back to the same
22 what's -- defenses the defendant allowed to raise in the first
23 place issue?

24 MR. SABIDO: Your Honor, it is related to a discussion
25 we had just a few minutes ago the whole s-2(a) versus s-2(b)

1 distinction, and the point of our motion is to make sure that
2 plaintiff does not attempt to use s-2(a) obligations as a basis
3 for a private right of action because there is no such private
4 right of action. It's only based on s-2(b).

5 THE COURT: I think there is no disagreement that this
6 case is brought under s-2(b). That is not in dispute.

7 MR. SABIDO: I understand that, however, their
8 position is that we have opened the door to s-2(a) provisions,
9 and I think as the Court has already pointed out that's not the
10 case. We're not claiming in any of our submissions or at any
11 time in this case that there was no duty to investigate. We're
12 simply saying that in the process of investigating, the
13 information that it had asked for and had received plays into
14 how it's able to investigate.

15 THE COURT: The issue is whether or not what Wells
16 Fargo was doing was reasonable as far as a reasonable
17 investigation or not.

18 MR. SABIDO: Yes, and part of that reasonableness will
19 turn on the information that it had.

20 So, again, just to sort of pull it back, we're not
21 claiming any s-2(a) provisions. We're simply saying as part of
22 the s-2(b) obligations, they should not be able to, in the
23 process of that analysis, be able to introduce s-2(a)
24 provisions, for example, the duty to report information
25 accurately or duties that relate to the direct disputes that are

1 lodged directly with the furnisher of information as opposed to
2 through the credit reporting agency. Those are all s-2(a)
3 duties.

4 MR. SOLA: Your Honor, if I may, because you point out
5 you're operating in a vacuum, and that's typical, so let's put
6 this argument in context.

7 Plaintiff's lawyer wrote to Wells Fargo on
8 October 19th, 2016, a direct dispute. A week later before any
9 notice from any CRA --

10 THE COURT: Right.

11 MR. SABIDO: -- they wrote back to the lawyer and
12 said, "Here's information we want the consumer to provide."

13 That has nothing do with s-2(b) because there was not
14 even an ACDV at that time, okay, but they want to use that as a
15 defense, that we requested information he did not provide. So
16 they can't have it both ways. Here they're saying, "Plaintiff,
17 don't get into s-2(a), but let us get into our request for
18 information that was made pursuant to s-2(a)."

19 And they just shouldn't be allowed to have both
20 if -- because that request could not have been an s-2(b). Their
21 request could not have been an s-2(b) request because they had
22 not even gotten an ACDV.

23 THE COURT: Not at that time.

24 MR. SABIDO: What?

25 THE COURT: They hadn't gotten it yet.

1 MR. SABIDO: They hadn't gotten it yet. That's right.
2 So it was -- the request was made under s-2(a). And now they're
3 saying we shouldn't be allowed to bring in any provision of
4 s-2(a) when they're trying to offer evidence that was done
5 pursuant to s-2(a); so --

6 THE COURT: Thank you.

7 MR. SOLA: Okay.

8 MR. PETERSON: Your Honor, the factual background for
9 the investigation goes all the way back to these letters that
10 Mr. Sola is describing. We're not using the legal theory that
11 s-2(a) provisions come into play. We're simply saying the
12 request for information dating back to October 2016 and the
13 responses thereto are relevant to the body of information that
14 Wells Fargo had in the process of attempting to comply with its
15 reasonable investigation obligations.

16 So this whole notion that they now get into s-2(a), in
17 our opinion, is not well-taken.

18 THE COURT: But it seems to me that they're correct in
19 that when Wells Fargo asked for the initial information that it
20 asked for from the plaintiff, wasn't that pursuant to 16 s-2(a).

21 MR. SABIDO: It is, but at the end of the day, we're
22 not -- I want to make to clear -- we're not claiming that
23 because there was some sort of violation of an s-2(a) provision
24 that their, therefore, excuse is the duty to investigate.
25 That's where s-2(a), as far as I understand, plaintiff's

1 argument, comes into play because the provision in s-2(a)8 talks
2 about what happens under those circumstances and --

3 THE COURT: Can I interrupt you for a second just so
4 I -- I want to make sure I understand Wells Fargo's position.

5 So Wells Fargo made the initial request pursuant to
6 2(a), didn't get the information that it wanted pursuant to
7 2(a), then had responsibilities under 2(b), and the failure
8 that -- failure to get information under 2(a) was part of the
9 reason that Wells Fargo didn't process under 2(b) as quickly as
10 it might otherwise have.

11 Am I saying that --

12 MR. SABIDO: I wouldn't quite characterize it that
13 way, Your Honor.

14 THE COURT: How would you say it?

15 MR. SABIDO: The request for information is simply
16 part of the investigation. Yes, it was done in response to a
17 direct dispute that was made and then that does fall within
18 2(a). But as far as I know, these requests were not, okay,
19 pursuant to 2(a), now please send us this information. And just
20 to take that to its logical conclusion, the reason why 2(a) may
21 come into play is that if Wells Fargo then takes the position
22 that the dispute is either -- get the wording here, frivolous or
23 irrelevant.

24 At no time did we ever take the position that because
25 of the failure to provide this information we now have deemed

1 the dispute irrelevant or frivolous. That's where 2(a) comes
2 into play so that's not in play here at all. We're simply
3 saying, yes, the request for information was made and in the
4 context of receiving the information or lack thereof,
5 that's -- that was -- that's part of the analysis of whether the
6 investigation subsequently conducted after assuming the ACDVs
7 was reasonable. What information did Wells Fargo have at the
8 time it received the ACDVs in order to conduct its reasonable
9 investigation obligations. We're not saying, "You did not
10 provide this information, therefore, you violated 2(a);
11 therefore, we now get to deem your dispute irrelevant or
12 frivolous." That's not the position we're taking.

13 THE COURT: I don't think that what you're saying was
14 different from what I was saying. You might have said it with
15 more words, but I don't think it was that -- that it was
16 inconsistent with my perspective of Wells Fargo's position.

17 MR. SABIDO: What I'm trying to avoid, Your Honor,
18 is -- or what we're trying to avoid is a situation where they
19 then get to open up all these s-2(a) provisions and say, "You
20 had a duty to accurately report information. You had a duty to
21 respond in the following manner to a direct dispute, because
22 there is no private cause of action arising out of those
23 provisions."

24 THE COURT: I get it. You're trying to kind of
25 control exactly how much information regarding 2(a) comes in.

1 MR. SABIDO: Correct.

2 THE COURT: And what you're trying to avoid are the
3 responsibilities under 2(a), but I think it is relevant that the
4 initial request was made pursuant to 2(a). And that makes some
5 sense to me that we and the jury learn that.

6 And I think that the jury then needs to have some
7 information, well, why is this happening in the first place, and
8 that's because 2(a) requires the -- or Wells Fargo, I guess, the
9 furnisher to do certain things at least initially.

10 And that's what Wells Fargo did. That makes some
11 sense to me that they would learn at least that much. Whether
12 they then have to learn about the other responsibilities under
13 2(a), I'm not so sure because it seems that the case then took a
14 different turn once they started getting reports from credit
15 reporting agencies.

16 I have to think about that.

17 MR. SOLA: Can I offer a suggestion?

18 THE COURT: Yeah.

19 MR. SOLA: Because, you know, I hear -- it sounds like
20 you're saying the fact that the request was made under s-2(a)
21 made be relevant, okay, and then we do open the door to s-2(a).
22 We are okay not opening that door as they want. And I think the
23 compromise solution here is they can still testify that they did
24 a reasonable investigation based on the information they had.
25 In other words. They can say, "We didn't have a Social Security

1 card," or "We didn't have a driver's license," or "We didn't
2 have this that we needed."

3 They just shouldn't be allowed to say, "And we
4 requested that from plaintiff and he didn't give it to us,"
5 because then you get into s-2(a). So I think that gives them
6 their full defense under s-2(b) which is, you know, that they
7 have to investigate based on what they have.

8 But if you open up the s-2(a) -- now, he pointed out,
9 they did not determine the dispute was frivolous or irrelevant
10 so actually they had to reinvestigate that direct dispute.
11 Their letter to him was meaningless under s-2(a) because the
12 only way they could avoid investigating under s-2(a) was to send
13 the frivolous or irrelevant letter.

14 So they can't have it both ways. They can't say,
15 "Well, we didn't comply with s-2(a) but the jury should hear
16 about our request made under s-2(a)," and I think the compromise
17 I propose is one that would work. They just can't say that
18 plaintiff was asked and plaintiff did not respond.

19 MR. SABIDO: Your Honor, if I may?

20 THE COURT: Sure.

21 MR. SABIDO: The date of that letter is very relevant
22 to our defense because part of their theory is that he made a
23 dispute and it took so long to correct this information. So to
24 take the position that our letter, back in 2016, should not be
25 admissible into evidence, I think, is not well-taken because

1 that goes to our defense of, yes, you sent the letter; yes, we
2 responded; yes, you requested this information. So to take that
3 out of the equation and somehow just -- and at the same time
4 claim we've been damaged for over a year, I think, would be
5 inconsistent.

6 THE COURT: When was the -- I don't have the timeline
7 in my head, which I think is important in this case. What was
8 amount of time from Wells Fargo's perspective that this was
9 initially a 2(a) problem and then at some point thereafter
10 became a 2(b) problem? What's the time?

11 MR. SABIDO: I don't think it's necessarily a -- at
12 least from Wells Fargo's perspective, they're not looking at it
13 as a, okay, we received this, that's a 2(a) dispute; we received
14 this, it's a 2(b) dispute. They're simply receiving this
15 information -- there is a unit that addresses this -- these
16 disputes. They simply received the direct dispute, they look
17 into it, and then they receive the ACDVs from the CRA so it's
18 not like they're making some internal determination, 2(a), 2(b).

19 THE COURT: But is part of your defense as regards
20 2(b) that you didn't get the information that you requested as a
21 result of a 2(a) investigation.

22 MR. SABIDO: In part. In order to --

23 THE COURT: Well, as long as it's in part, then it
24 matters, at least it matters to me.

25 MR. SABIDO: Sure. I mean, the investigation is

1 substantially impacted by the information that Wells Fargo has,
2 and part of that information is whatever response or nonresponse
3 they had gotten from the plaintiff.

4 THE COURT: What was the time frame between your
5 initial 2(a) letter or communication you got from the
6 plaintiff's lawyer and when you got your first communication
7 from the credit reporting agency?

8 MR. SOLA: Your Honor, could -- well, I'm sorry.

9 THE COURT: I'll give you a chance, I promise.

10 MR. SOLA: No, I meant for the dates, but that's no
11 problem.

12 MR. SABIDO: I was going to say it appears that the
13 direct letter was sent in October 2016, and then the first ACDV
14 was -- I believe it was November 2000 -- correct me if I'm
15 wrong. Was that consistent with your notes, Tim?

16 THE COURT: Okay.

17 MR. SABIDO: That was November 2017, yeah.

18 THE COURT: So a month?

19 MR. SABIDO: Yeah.

20 THE COURT: So at least right now, to the extent that
21 Wells Fargo was responding under 1681s-2(a), in October of '16,
22 the jury gets to learn that that's what was happening. As
23 regards whether or not they get to learn whether or not Wells
24 Fargo complied with the other responsibilities under 1681(2)(a),
25 I'm not convinced that it's relevant. At least I'm not

1 convinced that it's relevant yet. It may be, but I
2 haven't -- you know, kind of operating a little bit in a vacuum
3 here. I'm not certain it is relevant now, and I'm leaving that
4 information out for now.

5 MR. SOLA: Your Honor, I'd like to point out, so the
6 first ACDV response, the first ACDV I see was sent on 10/28.
7 You know, and Wells Fargo might have said they got it on a day
8 or two later, but they responded on November 3rd.

9 THE COURT: Okay.

10 MR. SOLA: And we have been very careful, Your Honor,
11 as that is the date our case begins, our damages begin because
12 that's the first ACDV and implicates s-2(b).

13 THE COURT: Right.

14 MR. SOLA: And so, you know, that's, I think, another
15 reason that that other information is not relevant because we're
16 not claiming damages from October 19th through November 3rd, in
17 other words, from the date of the first dispute. We are only
18 claiming the date of the first verification on an ACDV. We have
19 separated our claim and limited it only to s-2(b), and we think
20 that's all that the jury should be apprised of.

21 THE COURT: Right. I think you and I disagree about
22 that. Let's move on.

23 Where are we? What number are we on?

24 MR. FRANSEN: Number 7.

25 THE COURT: So that's a motion to exclude evidence

1 about references to alleged economic losses and damages,
2 including those associated with lost opportunity to obtain
3 credit or damage to reputation. So I know plaintiff is not
4 seeking economic damages in this case.

5 MR. SOLA: Yes, Your Honor, so I think that's moot.

6 THE COURT: Okay.

7 MR. SABIDO: Your Honor, I just wanted to make sure
8 everybody is on the same page on this.

9 And this arises out of way plaintiff responded to this
10 motion.

11 Lost opportunity to obtain credit, in our opinion, is
12 an economic loss, if anything. It's not cognizable as a
13 noneconomic loss so what they've said in their response to our
14 motion is that they're not seeking economic damages for lost
15 opportunity to obtain credit. What we want to be clear on is
16 that that should not be a basis either to seek a lost
17 opportunity to obtain credit. It's not a basis to seek
18 noneconomic damages. That's an economic loss, not a noneconomic
19 loss.

20 THE COURT: Okay.

21 MR. SOLA: No, it isn't, Your Honor. Economic loss is
22 you -- you know, you lost money. You had to pay an extra
23 interest rate. Lost opportunity to attain credit and -- was in
24 this case is that he knew his credit report was bad so he did
25 not seek credit. It's not an economic loss and the --

1 THE COURT: And that caused him emotional distress.

2 MR. SOLA: And that caused him emotional distress and
3 other related types -- yeah, but no economic damage. He's not
4 coming in -- and yeah. So I think that we -- we don't really
5 have a dispute.

6 THE COURT: You're not offering anything regarding
7 reputation damage, I assume.

8 MR. SOLA: Yes, we are, Your Honor. That's a --

9 THE COURT: In what way.

10 MR. SOLA: I mean, that's basically one of the main
11 damages in these cases is they are saying that he didn't pay a
12 \$29,000 bill that he owed, and that's not true. So that's
13 our -- his reputation damage. They are saying that he's
14 bad -- has bad credit, he didn't pay his bills. I could go on
15 and on, and that's not true, so they damaged his reputation;
16 right? His reputation for being a bill payer, for being honest,
17 for being credible.

18 THE COURT: Are you seeking damages for the emotional
19 distress that he suffered because he felt that his reputation
20 was damaged? Or are you seeking damages for --

21 MR. SOLA: Both, both.

22 THE COURT: -- his reputation, loss of his -- and so
23 who's going to testify as to loss of reputation itself?

24 MR. SOLA: Okay. So we have evidence that his credit
25 report went out to two companies, okay, and so he knows about

1 one of those. So that's our proof of damage to reputation that
2 somebody saw his report with this fraudulent account on it that
3 made him look bad. That's the damaged reputation.

4 Then emotional distress is --

5 THE COURT: That part you don't need to explain to me.
6 That part is understandable to me.

7 The other part I had some question because I didn't
8 see anything in the materials that I had read that said someone
9 was going to come in and testify that -- for the reputation
10 damage to exist, somebody else has to see it, and I didn't know
11 who that somebody else was.

12 MR. SOLA: Let me just clarify.

13 He knows that they saw it because he talked with them.
14 And then also, Equifax testified that they gave his report out,
15 and then his report indicates that his insurance company got his
16 file. So there's three different ways we can prove damage to
17 his reputation.

18 THE COURT: Okay.

19 MR. SABIDO: I just want to make sure, Your Honor,
20 that again, these are -- they're not claiming economic damages,
21 they haven't filed a statement of economic damages. And to the
22 extent these damages are properly characterized as economic as
23 opposed to noneconomic, then they should not come in.

24 THE COURT: All right. Thank you.

25 So at least as regards the damages associated with an

1 economic loss, I think that that question is moot, that the
2 plaintiff has agreed they're not seeking those damages.

3 They are seeking emotional distress damages, I don't
4 know whether reputation damages fall under emotional -- like
5 emotional distress damages or economic damages.

6 That's -- actually, I don't know the answer to that question.

7 MR. SOLA: Well --

8 THE COURT: I think typically they're not, but I don't
9 know the answer to that.

10 MR. SOLA: Well, the way I try to divide it,
11 Your Honor, is damage to reputation is someone saying something
12 negative about you that's not true. As you pointed out, you can
13 be bothered by that. We all would be.

14 So -- but -- so your reputation is damaged when
15 someone sees your report, okay, and then you suffer emotional
16 distress knowing someone has seen your report that paints you in
17 a bad light. But that's why I separate the damaged reputation.
18 You have to have a third party.

19 THE COURT: That's what I said, you have to have a
20 third party. I'm still not sure actually how you're going to
21 prove that. But that's not my issue right now.

22 All right. I'm going to put in a little note next to
23 that so I watch out for it as it happens.

24 So I'm going to just say granted in part, and then
25 I'll reserve ruling on the other portions of that, in

1 particular, the reputation damages.

2 Defendant's motion in limine, moving to number 8,
3 "Exclude evidence about references to defendant having liability
4 insurance." That motion is granted.

5 Number 9, "Exclude expert testimony regarding any
6 legal conclusions or interpretations of case law."

7 This gets to, I think, the expert reports, which I
8 read. Are you planning on -- I assume that you're calling an
9 expert who will be testifying. Are you also offering the report
10 of your expert?

11 MR. SOLA: Mr. Sand is going to take the -- I'm sorry,
12 I should stand -- the bulk. But, no, we're not going to offer
13 any reports.

14 THE COURT: Okay. It's just your witness that's going
15 to be testifying to that?

16 MR. SOLA: Yes.

17 THE COURT: Okay. And then I don't remember which of
18 your experts was testifying.

19 MR. SOLA: Do you want the names, Your Honor?

20 THE COURT: No. I can just tell you, generally, there
21 were some statements in there that were clearly not admissible
22 in the expert reports that I read.

23 I don't have any trouble with an expert saying this is
24 what the standard is in the profession, this is what the
25 standard is for banking, and I don't even have trouble if they

1 said -- if their opinion is that the standard was not met.

2 But opinions that the defendant acted willfully or
3 that the defense is specious -- I think is one of the words I
4 read in one of the reports -- that's not helpful to the jury and
5 not admissible.

6 And I don't want to go through -- because it took me
7 too long to, kind of, go through line by line what I thought was
8 admissible and what wasn't.

9 But in general, if your experts are talking about the
10 standards in the profession, whether or not plaintiffs met those
11 standards, that's admissible. I'm completely okay with that.
12 When you get to the areas of willfulness, then I have a problem
13 because that's not helpful to the jury. That's something the
14 jury is going to have to decide.

15 MR. PETERSON: And just for clarification, Your Honor,
16 other similar words such as - other phrases that were used, I
17 think, in both reports were reckless disregard, willful
18 violation. So you've mentioned willful, but we would argue that
19 should extend to other words that have meaning specific to the
20 statute.

21 THE COURT: Yeah. To the extent that you're telling
22 the jury how to decide that issue, or your expert is attempting
23 to tell the jury how to decide that issue, it's not admissible.

24 MR. PETERSON: Thank you, Your Honor.

25 THE COURT: Similarly, there was a couple of legal

1 points that I had a little bit of trouble with. One was your
2 expert was citing cases. I think it was out of the Sixth
3 Circuit -- might have been a different circuit, I don't
4 remember -- and a district court case out of that same circuit.
5 It might have even been the same case. I don't know.

6 But your -- one of your experts said, in that case the
7 court decided that what the defendant was doing was willful or
8 whatever it was. And again, I don't have trouble with your
9 expert talking about the standard in the field. But citing a
10 particular case out of another circuit in another district, I
11 don't want him doing that.

12 MR. SOLA: I believe the purpose of that was simply to
13 say that Wells Fargo was on notice because a court had ruled on
14 what the standard is, and I think that's admissible.

15 THE COURT: Well, I don't have him -- any trouble
16 saying, you know, I've read cases and it's admissible, bla, bla,
17 bla, bla, bla -- or excuse me -- that this helps formulate my
18 opinion about the standards. I don't have any trouble with
19 that. But that's different than saying, in another case, they
20 did exactly what they did in this case and that court ruled that
21 it was willful.

22 MR. SOLA: Okay. We agree with you on that,
23 Your Honor.

24 THE COURT: And that's really what I'm trying to get
25 at. Again, I can't remember which expert it was, but I remember

1 reading that specifically and that crosses the line.

2 MR. SOLA: Okay.

3 THE COURT: I assume, if you're familiar with your
4 experts, you know which one I'm talking about and probably know
5 where in the report it's located.

6 So, again, defendant's motion is granted on that,
7 number 9.

8 Number 10 is "Defendant's motion to exclude expert
9 testimony regarding emotional distress damages and damages that
10 an individual could suffer."

11 If expert is speaking in general terms -- as opposed
12 to specifically as regards to this case, motion is denied. To
13 that extent, it is denied. They can -- your expert can testify,
14 generally, in my experience, and what I've read about, people
15 suffer emotional distress, that's okay and I will allow that.

16 Next one, number 11, "Defendant's move to exclude
17 expert testimony regarding topics not set forth in their expert
18 reports." That's another one of those "make them follow the
19 rules" motions, and I'm going to reserve ruling on that because
20 I don't know what it is you're talking about. I cannot
21 anticipate it.

22 Number 11 is "Defendant's motion in limine" -- excuse
23 me. That was 11. We're on 12 to "Exclude Golden Rule arguments
24 or comments." That motion is granted.

25 MR. SOLA: Your Honor, if I might.

1 We have no intention to argue the Golden Rule. But it
2 went beyond that and they said nothing in a book, I think it's
3 called "Reptile" or something, you know.

4 And to be honest, I haven't read the book, Your Honor,
5 so I wouldn't even know if I'm violating the rule. It's so
6 vague. I mean, the prohibition.

7 So I would ask that you just limit it, that we can't
8 say, you know, what they said, put your shoes in the -- put
9 yourself in the shoes of plaintiff, or something like that. We
10 won't argue that. But I can't avoid -- I don't know what's in
11 this book. So I don't know what they mean.

12 MR. SABIDO: Your Honor may be familiar with the whole
13 reptilian theory. It goes -- it's essentially an extension of
14 the Golden Rule argument, and that goes beyond simply putting
15 yourself in plaintiff's position and saying, think about what it
16 would be like to be in an identity theft situation, or we need
17 society to send a message here, or Wells Fargo needs to learn in
18 order to protect society that it needs to do things differently.
19 Those are all reptilian-type theories, extensions of the Golden
20 Rule argument. And we can't anticipate every potential argument
21 made along those lines so we've simply provided some examples in
22 our motion.

23 THE COURT: So that's an argument issue, not a --

24 MR. SOLA: Your argument about sending a message, I
25 mean, that's, like, your standard argument on punitive damages.

1 That's the purpose of punitive damages, to punish and deter
2 future conduct. You might phrase it as a message, but, I mean,
3 that -- that would eviscerate the whole model jury instruction.

4 So we're not going to put -- say "put yourself in the
5 shoes of the plaintiff," any of the Golden Rule stuff.

6 THE COURT: Thank you.

7 Anything else?

8 MR. SABIDO: Nothing further, Your Honor.

9 THE COURT: All right. I think they're right on
10 punitive damages issues. I think, in fact, the instruction
11 says -- I don't know if you're familiar with the instruction off
12 the top of your head, but I think that there's language in the
13 instruction, and anything that's in the instruction, you can
14 argue. I'll leave it at that.

15 If there's something beyond what's in the instruction
16 regarding the purpose of punitive damages that you intend on
17 arguing, before you get there, will you just let me know so I
18 can take a look at it and refresh my memory on that.

19 MR. SABIDO: If I can add real briefly, Your Honor,
20 that ties into the motion to bifurcate, which I'm sure the Court
21 will address later, at what point do they get to hear that type
22 of argument.

23 THE COURT: Okay. Let's see. Fact witnesses from the
24 courtroom are excluded. Evidence -- we're at number 14.
25 "Exclude evidence of a purported TransUnion 'block notice.'"

1 I wrote the motion was denied, but I cannot remember
2 what it was about. Somebody remind me.

3 MR. SOLA: Well, they complained, one, that the
4 documents weren't produced timely, but we pointed out that we
5 served the subpoena timely and that that's the standard for
6 timeliness.

7 And then they argued that -- I think that they needed
8 to be explained, and we had a -- we argued that we had a
9 certification -- they're not business records.

10 Do you want me to go on? You denied it, so I don't
11 want to play snatch defeat from the jaws of victory.

12 THE COURT: Yeah. I just didn't remember what it was.

13 Was there anything else on the part of defendants on
14 this issue?

15 MR. FRANSEN: Your Honor, the letter at issue is one
16 that at Wells Fargo deposition they did not believe they had
17 received and plaintiff has gotten a copy of this letter from
18 TransUnion they're going to put into evidence, and they are
19 going to claim Wells Fargo received it. There's no actual proof
20 of that.

21 They have a proof of the mailing, but they don't have
22 anybody -- you know, there was nobody from TransUnion for us to
23 ask, for example, "Well, if TransUnion sends a block notice and
24 they get it back, is that notated in the record?" Something
25 like that. So all we have is just sort of a bare document with

1 no one to explain it.

2 And it's not just about the receipt. It's also the
3 content of it. The document itself isn't really evidence of
4 anything of importance in the case. TransUnion and other credit
5 reporting agencies are under totally different standards for
6 when they block information as to when furnishers do. This has
7 got considerable potential to mislead the jury into thinking,
8 "Oh, TransUnion blocked it, Wells Fargo should have blocked it
9 too."

10 THE COURT: Thank you.

11 Is there anything else you all want to tell me?

12 MR. SOLA: Well, in terms of the lack of receipt, they
13 can raise that issue, you know. And then, you know, I can cite
14 case law. There's a Ninth Circuit case saying a fraud block
15 notice is equivalent to an ACDV, and that's out content. It's
16 *Drew v. Equifax*. It's in the material.

17 So they can argue they didn't get it and that's why
18 they didn't have to do anything. But we have evidence that it
19 was mailed and it's -- they should have done something.

20 THE COURT: I think I was right the first time. That
21 motion is denied.

22 We're at number 15, "Exclude deposition testimony
23 where defendant's nonmanagerial employees were asked to testify
24 on behalf of the defendant." That motion is denied.

25 And then a motion to amend the answer, is -- I think I

1 read everything in that -- in that motion. I don't -- did I
2 just read a reply in the motion to amend? Or did you -- are you
3 filing a reply in that one?

4 MR. FRANSEN: We filed a reply on --

5 THE COURT: Friday?

6 MR. FRANSEN: -- Thursday or Friday, and I think we
7 had a copy delivered to your chambers as well.

8 THE COURT: Yeah. I think I just read it before I
9 took the bench, as I recall. I was reading a bunch of stuff
10 that just came in on Friday.

11 So let me first turn to the plaintiffs on the motion
12 to amend.

13 Actually, let me hear from the defendants first.

14 Your motion. What do you want to tell me?

15 MR. FRANSEN: Your Honor, the standard for amendment
16 is, I assume, very familiar to everybody.

17 Wells Fargo would like to amend its answer to simplify
18 the issues for trial. It's -- we're not adding anything new to
19 the case. It doesn't change anything else that's been
20 submitted.

21 Plaintiffs have complained it might cause them to
22 change their strategy a little bit but that's not a valid reason
23 for denying leave to amend; so --

24 THE COURT: Why did it take you so long?

25 MR. FRANSEN: Well, you know, when we have to answer

1 originally, obviously, the case is very new. And we conduct
2 discovery, we do our investigation. It does take time. And I
3 don't know that there's a requirement to admit liability faster
4 than -- by some specific time.

5 You know, the issue -- the issue, as we understand it,
6 for the standard is you look to if there's any prejudice to the
7 other side and you look to the reasons for doing it. And those
8 are the two most important issues. And here, there is no
9 prejudice, and our reasons for doing it are to simplify issues
10 for trial.

11 Defendant is going to argue at trial, we're going to
12 submit evidence and witnesses are going to testify that are
13 consistent with this admission of negligence, this limited
14 admission of negligence. So all we're doing is amending the
15 answer to be the evidence that's going to end up being
16 presented.

17 THE COURT: What difference does it make whether you
18 amend your answer or not? I mean, you stand up at opening
19 statement and say we admit we were negligent in this short
20 period of time.

21 MR. FRANSEN: It seems to us to be the proper thing to
22 do to make sure the admission is official and then goes into the
23 jury instructions as well.

24 You know, plaintiff has made a big deal today, and in
25 some of their filings, about Wells Fargo never admitting this,

1 never apologizing, never saying that, and that's all been sort
2 of in response to us seeking this leave to amend to say there
3 was limited negligence, and we want to put that in the jury
4 instructions and simplify issues for the jury.

5 THE COURT: Thank you.

6 Is there anything you all want to tell me?

7 MR. SOLA: Well, I think you, first, hit the nail on
8 the head.

9 Under Rule 16, they need good cause to modify a
10 scheduling order. There's no good cause here. They haven't
11 even tried to argue good cause.

12 Under Rule 15, an amendment of a pleading, you look at
13 undue delay, bad faith, and prejudice. They lose on all three.
14 Undue delay, I mean, the amended -- that deadline was last June
15 of 2018, okay. They waited more than a year.

16 Bad faith? I think we can see bad faith, Your Honor,
17 because you asked that question. Why did you wait so long? And
18 they basically are admitting they could do it at trial, but they
19 want to do it here, and they don't just want to do their
20 amendment, they don't want the jury to know they made an
21 amendment, Your Honor. They don't want the jury -- the want the
22 jury to think that they admitted liability long ago.

23 And, under prejudice to us, our experts would be very
24 different, our deposition would have been different, our
25 discovery would have been different if they would have admitted

1 partial negligence.

2 The question I would have loved to ask them is, "Okay.
3 What did you do that was negligent in 2017 that you didn't do
4 that was negligent in 2016?"

5 And then if they told me, I'd say, "Why didn't you do
6 that in 2017?" So there were a lot of questions I could have
7 asked.

8 So I think that it's too late, they should have done
9 it earlier, we're prejudiced.

10 And as you said -- oh, and it complicates the case,
11 Your Honor. We have one claim for negligent failure to comply.
12 We don't break it up by ACDV, we don't break it up by year.
13 They have artificially decided to split our claim in two, and
14 that's going to cause the jury to have to answer more questions.

15 And they can't -- you know, as the plaintiff, we get
16 to bring our claim as a unified claim for negligence. They
17 should not be allowed to split our claim and then ask the jury
18 to decide two different sections. It doesn't streamline the
19 case, it makes it more confusing.

20 Their verdict form has more questions than our verdict
21 form. The jury instructions are going to be longer. And
22 especially with negligence versus willful, which isn't always
23 the clearest thing for a jury, now they're saying partial
24 negligence. You know, we think it -- you know, it should have
25 been denied, it should have been done earlier, and they have no

1 basis, good cause to do it.

2 THE COURT: Thank you.

3 I'm supposed to consider undue delay, bad faith,
4 prejudice to the opposing party, futility of the amendment, and
5 whether the pleading was previously amended.

6 In this case, I find that the delay was, in fact,
7 undue. I'm not willing to find that there was bad faith. I
8 think this is a trial tactic that the defense is asking this
9 Court to consider. It does not simplify the case to any
10 significant degree. I find that the plaintiffs are prejudiced
11 should I grant such a motion.

12 And just based on those three factors, I'm ordering
13 that the motion be denied. I'm not addressing futility of the
14 amendment, although, I don't see what real function it serves in
15 that defendant can tell the jury that they are conceding
16 liability for the period of time that they are now conceding
17 liability.

18 So under those -- or with those findings, I'm denying
19 the motion.

20 Secondly, the defendants move to bifurcate this trial,
21 to separate out the question of, I believe, willfulness in this
22 case and damages in this case -- excuse me -- damages in this
23 case should the jury come back with a verdict so that a separate
24 jury would then consider the damages portion or whether punitive
25 damages should be imposed.

1 The motion to bifurcate is denied. This matter will
2 be resolved by one jury at the same time.

3 MS. SMITH: Your Honor, if I could just clarify.

4 Our motion in that regard was not to have willfulness
5 decided separately, just the damages.

6 THE COURT: Yes. I'm sorry. I misstated that.

7 MS. SMITH: Thank you.

8 THE COURT: Thank you.

9 Then let's see. Let's get to the other motions, and
10 I'm now turning to exhibits.

11 The first set of exhibits are in, I think, a series of
12 emails between plaintiff and the -- was it the investigating
13 police agency? I think that's what they were. And those are
14 Exhibits 1, 6, 7, 8. I don't know if 9 falls into that or not.
15 Let me find my notes.

16 MR. FRANSEN: I think 9 does.

17 THE COURT: Same thing?

18 MR. FRANSEN: But 1 is not with the police or part of
19 it, at least.

20 THE COURT: So Exhibit Number 1 is, I think, the
21 first -- is that the first communication that plaintiff had
22 letting him know that there was a problem?

23 MR. SOLA: Yes, Your Honor.

24 THE COURT: The motion to exclude Number 1 is denied.
25 It can be offered for the purpose of explaining that this is how

1 I found out that there was a problem.

2 Exhibit Number 2 -- excuse me -- Number 6, then -- and
3 excuse me -- through 9 are, again, communications with the
4 police regarding what was going on with the criminal prosecution
5 of the individual that took the plaintiff's identity.

6 I assume the purpose of these exhibits is, again, just
7 to simply explain why the plaintiff was doing what he was doing
8 as regards Wells Fargo.

9 MR. SOLA: Yeah. They go to damages. Because they
10 hadn't fixed his report, he was following up with the police.
11 Especially the ones in January, where he's actually asking them
12 about documentation, because he feels he needs to do more to get
13 Wells Fargo to take it off.

14 THE COURT: So 6 through 9 are admissible.

15 If you want a limiting instruction regarding the
16 hearsay aspect, I'll give it to them. I don't know that it's
17 worth the trouble.

18 MR. SOLA: Your Honor, don't we -- I think there's an
19 exception there because these officers are informing a victim, a
20 crime victim. So that's --

21 THE COURT: There's an exception for police reports?

22 MR. SOLA: There's an exception for a statement on a
23 matter observed by law enforcement personnel in a criminal case,
24 and that's what they're doing. They're telling him what they
25 learned in his criminal case.

1 THE COURT: Yeah. This is your client's statements
2 back and forth; correct?

3 MR. SOLA: It's both. It's -- but I'm saying the
4 officer's statements are not hearsay because they come under the
5 exception.

6 THE COURT: What about your client's statements?

7 MR. SOLA: My client's statements are not offered for
8 the truth of the matter asserted. They are offered just to show
9 that he took this action.

10 THE COURT: So that gives them a limiting instruction;
11 right? Because it's not -- you get it because it's not hearsay,
12 but that means there's a limiting instruction because it's not
13 offered for its truth. That's what the limiting instruction --

14 MR. SOLA: I misunderstood. I didn't realize that you
15 were also -- that you did accept the hearsay exception for the
16 officer's statement.

17 THE COURT: But, again, my point was I don't know that
18 it's worth the trouble, giving them a limiting instruction. You
19 all can think about it and decide whether you want one or not.

20 MR. FRANSEN: Thank you, Your Honor. And we would
21 dispute this qualifies for the police report exception.

22 THE COURT: I'm not sure that it does either. Be that
23 as it may, I think there's a nonhearsay purpose for all of it
24 anyway, so I think it comes in.

25 Number 28 were Equifax emails to the plaintiff. The

1 objection is overruled.

2 Exhibit 45, Wells Fargo loan documents, the objection
3 is overruled.

4 46, 48, 49, 50 and 51, the objections are overruled.
5 52, 53, 54, and 55, the objections are overruled. 56, 57, and
6 58, the objections are overruled. 59, 60, 61, and 62,
7 objections are overruled. 63 and 64, overruled. 65 is the
8 section of the law, the motion is granted. 66 --

9 MR. SOLA: Your Honor, if I might.

10 I just want to -- I want to use that as a
11 demonstrative exhibit in the -- in my opening statement.

12 THE COURT: You want to point out what law says in
13 your opening statement? That's fine.

14 MR. SOLA: Okay. So that -- because that's our
15 standard. So that's okay? I just want to show those sections
16 in our opening statement.

17 THE COURT: Yeah. Yeah. If you want to kind of
18 anticipate what the jury instructions are going to say and use
19 those in your opening statement, you're welcome to do so.

20 MR. SOLA: Thank you.

21 MR. FRANSEN: We would object to that just because we
22 were just talking about the Section 1681 procedures, and you
23 were hedging a little bit on whether it might be relevant to
24 talk about them, and it might not be relevant based on where the
25 case is going.

1 But here, he's -- Counsel wants to put up the
2 statements for the jury from 1681(a) and show them to them
3 before evidence has even been put in the case.

4 THE COURT: Yeah. I understand what you're saying. I
5 was actually just focused on this of whether or not you get to
6 put the law up and whether or not it was marked as an exhibit.
7 I thought it was going to be offered as an exhibit to go to the
8 jury and I wasn't going to allow that. I hadn't really analyzed
9 whether he was putting up section (a) and section (b).

10 MR. SOLA: Can I clarify? It's not s-2(a).

11 THE COURT: I'm sorry. Okay.

12 MR. SOLA: Because I know that's a quagmire. No, no,
13 this is actually the congressional finding; so --

14 THE COURT: Is that right?

15 MR. FRANSEN: We don't find that to have any bearing
16 on the case and there's some argument in the jury instructions
17 about that as well. It doesn't matter to the jury why congress
18 passed the FCRA or what the legislative political purpose of it
19 was. What matters is what the statute says and whether or not
20 the defendant violated it.

21 THE COURT: Go ahead. I'm going to grant the motion
22 to exclude the exhibit to the extent that it runs to the
23 congressional intent of 61 -- 1681 (a)(1). You're welcome to
24 put on 1681 (2)(b) in front of jury. This is something you
25 wanted to do in your opening statement?

1 MR. SOLA: I do, but (a)(1) basically says that
2 Congress has found that the accuracy of credit reporting is
3 essential to our banking system. And that underlies the entire
4 purpose and meaning of the act, the accuracy. And I think the
5 jury, since they're deciding whether the FCRA was complied with,
6 they should know why Congress enacted it and, again, it's only
7 one or two sentences and accuracy is our argument.

8 THE COURT: I'm sorry, say again.

9 MR. SOLA: It's only one or two sentences and
10 basically our main part of our case is this was not accurate
11 information. It should have been fixed.

12 And that's why Congress enacted the Fair Credit
13 Reporting Act, to make sure that inaccurate information got
14 corrected. And I don't think the jury can properly decide if
15 the law was complied with if they don't know the context and
16 know the purpose for the law that they're trying to decide was
17 complied with.

18 THE COURT: Yeah, I completely disagree with the last
19 statement.

20 MR. SOLA: Well, but agree with the first part.

21 THE COURT: Yeah. I understand why you want to do it.
22 The answer is still no. Let me think about whether I let you do
23 it in closing argument. I think it -- if it comes in at all, it
24 would be more argument than it is appropriate in opening
25 statement.

1 MR. FRANSEN: And, Your Honor, just last final point,
2 I just want to correct something Mr. Sola said, inaccuracy isn't
3 the standard under s-2(b). It's whether the investigation was
4 reasonable so they can't sue us for reporting inaccurate
5 information. They can sue us for failure to correct a report
6 without doing a reasonable investigation. That's all.

7 THE COURT: This is going to be a fun trial to watch.

8 Let's see. We're at 66. The answer I already told
9 you. I don't send answers to the jury. So your motion is
10 granted.

11 67, the request for admissions also has a request for
12 admission and its response, the information may be admissible,
13 but the request itself is not going to be received. Your motion
14 is granted.

15 As regards motion for partial summary judgment, never
16 does that go to the jury. That motion is granted.

17 MR. SOLA: Okay. I'm sorry. I withdrew that motion.
18 I informed them and didn't inform you.

19 THE COURT: Okay. Thank you. I didn't catch up with
20 you on that one. Thanks.

21 Then Defendants' Exhibit 501, it's a letter from Wells
22 Fargo to the plaintiff. We've been talking about this a lot,
23 haven't we? That motion is overruled -- or the -- yeah, the
24 motion to exclude 501 is overruled.

25 509, I'm going to reserve ruling on that one. Before

1 you offer that one, give me a head's up, and the same with 510.
2 I need to think about those.

3 MR. FRANSEN: Your Honor, is there an issue with 509
4 or 510 that perhaps --

5 THE COURT: There may be. I just don't recall right
6 now because I have too many things on my brain, and I just don't
7 remember what it was for this one so I'm just going to have to
8 go back and take a look at it.

9 MR. FRANSEN: Okay. Thank you.

10 THE COURT: 509 was -- I'm just not sure how relevant
11 they are to this case. I think it was a relevancy issue, and
12 they may be. I just don't know, and by the time you offer them,
13 I'll say, "Oh, yeah, makes complete sense to me."

14 MR. FRANSEN: Would it help the court if we provided
15 some supplemental briefing on the relevancy of it?

16 THE COURT: I don't think so. I mean, I just think I
17 need to wait to see how the case unfolds, and then I'll be able
18 to make a determination at that point.

19 MR. FRANSEN: Thank you.

20 THE COURT: And then I'll allow you to make whatever
21 argument if I'm deciding -- if I rule against you or I don't
22 think it's coming in, I'll give you a chance to make an
23 argument.

24 Then I want to turn to objections to witnesses and
25 deposition designations.

1 I'm first looking at -- there's an objection to
2 witness Mary Frances Barron. You -- both sides have witnesses
3 that you're complaining were not known until, I think, you filed
4 your first wave of documents with the court. The defense
5 is -- complains about Ms. Barron, and I think the plaintiffs
6 complain about two witnesses, as I recall, that you
7 weren't -- weren't familiar with until, I assume, you got the
8 waves of documents from both sides.

9 So I hate to give you homework, but I also hate to get
10 rid of witnesses.

11 MR. SOLA: There's a great difference. Let me just
12 point out, Ms. Barron was disclosed in deposition on October 12,
13 2018, months before the deadline.

14 The other witnesses weren't disclosed until the first
15 wave when we had no opportunity to dispose. So I think it's
16 really apples and oranges on the two witnesses.

17 THE COURT: Of course you do. And I don't disagree
18 with some of what you're telling me.

19 I don't know that a witness saying something during
20 the course of the deposition, however, gets to the same place as
21 a lawyer saying, "Hey, these are our witnesses" or "These are
22 the people I intend to call at trial."

23 MR. SOLA: But let me -- he actually -- they asked,
24 "Is there a witness to your frustration that your experience
25 with Wells Fargo?" And he said, "Definitely my mom." So, I

1 mean, that's not just a disclosure of someone with incidental
2 knowledge. That's actually a disclosure of a witness so
3 I -- you know, so I think that's different than other types of
4 disclosures.

5 THE COURT: All right. In any event, both of your
6 problems are we didn't know about these people. Now, one of
7 them was a person that -- that was -- that's a substitute
8 witness on the part of the defense. Is that correct that you
9 had somebody that had moved to a different job and is now --

10 MR. FRANSEN: Yeah, that's correct. Megan Braxton is
11 intended to be our representative at the trial, sitting at
12 counsel table. She has the same job as the person who was
13 deposed as a 30(b)(6) witness on two occasions earlier this
14 year. The other individual is not going to be sitting at
15 counsel table, but he is simply a manager in another department
16 who will be able to explain that department's specific roles,
17 and those -- those, in fact, relate to Exhibits 509 and 510.

18 THE COURT: And that's John Cooper; right?

19 MR. FRANSEN: That's correct.

20 THE COURT: So I get Megan Braxton, the -- Wells
21 Fargo, big organization, things change, and you want to use
22 Ms. Braxton and tell them nothing is really changed. All right.
23 Put that aside for a second, but Mr. Cooper seems like brand new
24 stuff.

25 MR. FRANSEN: Well, he -- we've disclosed through our

1 initial disclosures what -- really what you can do as a big
2 company as you say, we're going to have a representative at
3 trial who is going to talk about policies and procedures. We
4 did not endeavor to specifically decide who that person was
5 going to be previously.

6 THE COURT: Is that what Ms. Braxton is doing?

7 MR. FRANSEN: Ms. Braxton is talking about -- she
8 works in the credit bureau resolution department. John Cooper
9 works in the fraud department. So they are two separate
10 departments, but they work together on these types of disputes,
11 and of course, as you know, that's a very big issue in this case
12 is whether it's reasonable how that's set up. But Mr. Cooper is
13 manager of -- he would be the manager of -- or he would be one
14 of the managers of somebody like William Brady who is one of our
15 witnesses. So he's in a better position to testify about
16 those -- well, I should say he's in a good position to testify
17 about those -- those items.

18 Now, when they sent the 30(b)(6) deposition notice,
19 they had a very lengthy list and, I believe, we had some
20 negotiation about what all is going to be on it, but at that
21 time we simply identified Bets Berg as our witness and she
22 talked about credit bureau and fraud issues. For purposes of
23 trial, though, we'd like to have Megan Braxton talk about credit
24 bureau resolution department issues, and we'd like to have
25 another witness who is actually in the fraud department talk

1 about fraud issues.

2 There was no complaint after either of Bets Berg's
3 depositions that she was not adequately prepared to talk about
4 the topics on the list. There were some discussions about
5 whether Wells Fargo produced all its documents, but there wasn't
6 a discussion about Bets Berg not being properly prepared for the
7 deposition.

8 So we believe, under the rules, Wells Fargo is not
9 bound forever to make the same designation that it made a year
10 ago in the case for trial. And so that's why we've designated
11 two witnesses where it was previously designated one.

12 THE COURT: All right. Thank you.

13 MR. FRANSEN: I do want to clarify. I'm sorry. And
14 we are not taking the position -- for example, John Cooper's
15 testimony is still impeachable or whatever with Bets Berg's
16 testimony on the same topics. We wouldn't dispute that.

17 THE COURT: Okay.

18 MR. SOLA: Well, Your Honor, actually in their initial
19 disclosures, they said "Representative of Wells Fargo to be
20 identified," and then they said, "Knowledge of events alleged in
21 the complaint," so they said they were going to identify the
22 witness in their initial disclosures and they do need to
23 identify the witnesses.

24 And they did. The only person they identified was
25 Bets Berg. And she testified -- we never -- well, Megan Braxton

1 was incidentally mentioned. I don't know if Mr. Cooper was,
2 but, you know, that didn't give us the opportunity to depose
3 these people.

4 He also says, "Well, we can switch our corporate
5 representative." Your Honor, they were not designated corporate
6 representative. They were listed as lay fact witnesses in their
7 witness statement. Lay fact witnesses, that's how they
8 designated them. It was only after we objected that they had
9 not been identified that they switched and said, "Oh, these are
10 our 30(b)(6) witnesses." They can't switch how they identify a
11 witness in a witness statement.

12 Also, well, rule 30(b)(6) is not a trial rule. It's a
13 deposition rule. And it's a deposition rule that's given so the
14 either side can get information that's known by a corporation.
15 Otherwise, I could never get the information.

16 So 30(b)(6) is actually done to the benefit of the
17 opposing party. They now want to come in and say, "This is a
18 30(b)(6) witness," and they can testify even if they don't have
19 personal knowledge on their own behalf, on Wells Fargo's own
20 behalf. That's not what 30(b)(6) allows, and, again, 30(b)(6)
21 doesn't override Federal Rule of Evidence 602, which requires
22 personal knowledge. Now, I know I'm shifting a little here,
23 getting from nondisclosure to personal knowledge, but I just
24 want it clear that they said they would identify these people
25 and they didn't.

1 And you hit the nail on the head, Mr. Cooper is not a
2 substitute for Ms. Burg. He's a new -- he's a new guy, and they
3 already are calling Mr. Brady. He's in the fraud department.

4 So they got a fraud department witness in Mr. Brady,
5 and, you know, I could go on. There's -- it was great prejudice
6 to plaintiff because they hadn't been identified. We tried to
7 depose everybody in this case. We went to you, Your Honor, and
8 we said, "We want to depose nine employees about this case."
9 And you said that -- go ahead. If we would have known about
10 Cooper and Braxton, we would have deposed them.

11 And we didn't get that chance.

12 THE COURT: Thank you.

13 So why do you need somebody in addition Brady?

14 MR. FRANSEN: Well, couple of reasons, first off,
15 Mr. Brady no longer works in the Wells Fargo fraud department.
16 He's still employed by the bank but in a different capacity now.

17 THE COURT: Yeah, but he didn't forget everything that
18 he once knew while he was working in the fraud department.

19 MR. FRANSEN: I don't know that that's true or not. I
20 mean, obviously he's -- we know he knows some things and he is
21 being called to testify about what he does remember, but he's
22 not the manager of that department. Plaintiffs have submitted
23 some arguments in this case that, basically, anyone who works
24 for Wells Fargo, as a managing agent, disagree with that
25 position.

1 William Brady -- John Cooper is the type of person who
2 would oversee William Brady's work, and I should clarify, they
3 did not work below and above each other at any specific time.
4 Again, people have come in and out of different roles with the
5 bank.

6 But John Cooper is in a position to testify about what
7 the policies and procedures were at the time in question and
8 what they are now. And he's in a better position to testify to
9 all that information.

10 A corporation can only testify through its
11 employees -- or its managers. We don't have the option to call
12 Wells Fargo and just put something up there. We've got to have
13 people to do it.

14 And in this case, we think it makes a lot more sense
15 to have two people, one from each of the departments, who are at
16 issue, come up. I'm not sure I understood some of plaintiff's
17 counsel arguments. 30(b)(6) is the way corporations give
18 testimony at deposition. I think the only -- the only reason
19 we'd ever bring it up is to show that it's a similar standard
20 for when those people need to have personal knowledge. The rule
21 being manager -- and there's a Ninth Circuit case on this that
22 we've cited. Managers of departments are presumed to have
23 knowledge of the policies and procedures of their departments so
24 Megan Braxton has personal knowledge of her department. John
25 Cooper has personal knowledge of his department's policies. And

1 they'll be -- they'll be able to present to the jury evidence of
2 what those policies were, what they are now, and what they used
3 to be, and they'll be able to explain whether certain conduct
4 was taken consistent with those policies or not consistent with
5 those policies.

6 THE COURT: Thank you. All right. You want them, you
7 can have them, but you need to make them available for
8 deposition between now and the time of trial. Understood?

9 MR. FRANSEN: Does it need to be in person? Can it be
10 remotely?

11 THE COURT: I don't know. Do you have a preference?

12 MR. SOLA: Well, Your Honor, I mean, I appreciate
13 that, but we have a week. We're --

14 THE COURT: I know.

15 MR. SOLA: -- preparing for trial here, and I think
16 it's prejudicial to have us have to depose these two witnesses,
17 you know, a couple days before trial.

18 THE COURT: I know, but I'm loathe to exclude evidence
19 by witnesses unless there's no other alternative. And you have
20 a bunch of lawyers there. You can get this taken care of and
21 get these people deposed.

22 MR. SOLA: I mean, Bets Berg is still there. You
23 know, I don't know why they can't call her, but anyway let me
24 make one other point and this goes to their personal knowledge.

25 They say they're going to talk about plaintiff's

1 receipt and reinvestigation -- or investigation and response to
2 plaintiff's disputes. They don't have any personal knowledge of
3 that. That's different than what are the procedures of the
4 fraud department.

5 In fact, Ms. Berg was asked, does Ms. Braxton, was she
6 involved in plaintiff's disputes, and she said no. She wasn't
7 there at the time.

8 So I would move to exclude that portion of their
9 testimony because they have no personal knowledge of anything
10 related to plaintiff's disputes.

11 THE COURT: Take the deposition, and then you'll be in
12 a much better place to make your motion.

13 MR. FRANSEN: May I ask a clarifying question? Since
14 Megan Braxton is essentially just replacing Bets Berg, does she
15 still also need to be deposed again to cover the same topics
16 that Bets Berg already covered?

17 THE COURT: Yes. If you want a witness that they
18 haven't seen before, they get a chance to depose them.

19 MR. FRANSEN: Okay.

20 THE COURT: Absolutely. And by the same token, if you
21 want to depose Ms. Barron, they're going to make her available
22 for you.

23 MR. FRANSEN: Thank you.

24 THE COURT: Let's move on.

25 Evan Hendricks. I think we've already talked about

1 this. Testimony prohibiting from rendering legal opinions,
2 again, they're allowed to speak in generalities. They're
3 allowed to talk about standards and whether the standards were
4 met. So I will grant the motion in part. Witness Thomas
5 Carter, same thing. I've already talked about emotional
6 distress. Do you need any further clarification regarding that?

7 MR. PETERSON: Your Honor, if I could just ask one
8 question to clarify, so one of the things we object to and I
9 just want to make sure I understood you in your earlier ruling,
10 they spend a lot of time in their reports talking about the sort
11 of generically what harm a person could suffer as opposed to
12 what harm this plaintiff suffered. Is it your ruling that that
13 is okay for them to testify about?

14 THE COURT: I think the way I put it was, an expert
15 can testify that based on his experience and research and
16 education, that people who have gone through this suffer these
17 kind of harms.

18 MR. PETERSON: Okay. Thank you.

19 THE COURT: Mr. Brady, so the defendants wanted to use
20 the deposition testimony of Mr. Brady -- excuse me. The
21 plaintiffs wanted to use the deposition testimony, and defense
22 is objecting because he's going to be here. That's fine, if
23 he's going to be here, but you've got to bring him and have him
24 here for their case-in-chief. And if he's there for their
25 case-in-chief, then use live Brady. If he's not here for your

1 case-in-chief, then use the deposition.

2 MR. SOLA: All right. Well, I mean, it's --

3 THE COURT: One of the things that I -- that you cite
4 was the rule, and I disagree with you that the rule applies in
5 this particular case for using his deposition because if he's
6 here, he's available, he's right there behind you. And
7 secondly, I don't believe he's a manager.

8 MR. SOLA: Your Honor, it would just be ten minutes.
9 I think it would just be more efficient if I just read his
10 deposition in our case-in-chief, and then he doesn't have to
11 show up a day or two earlier.

12 THE COURT: Work it out. It will save a lot of money
13 by not having to bring him here a day or two earlier. But if
14 they're insisting that he use live testimony, we'll bring him
15 here a day or two earlier.

16 MR. SOLA: Okay.

17 MR. PETERSON: Your Honor, will we have the
18 opportunity as part of this today to talk about some of those
19 logistics, about how long plaintiff's case will be and so we
20 know when we have to have out-of-state witnesses here? Is that
21 part of what we'll discuss in the logistics portion of this?

22 THE COURT: Yes.

23 MR. PETERSON: Thank you.

24 Dean Binder. This is a defense witness. Do I need to
25 talk about him, or have we already resolved that by way of

1 motions in limine?

2 MR. SOLA: No, I think we have a motion Mr. Sand is
3 going to address.

4 MR. SAND: This bleeds into what we were talking
5 about, the s-2(a), s-2(b) division, but the majority of
6 Mr. Binder's expert testimony, expert report, discusses s-2(a),
7 discusses the reasonableness of -- his opinion on the
8 reasonableness of Wells Fargo's policy to request the Social
9 Security number. But the majority of his report does not
10 discuss anything about s-2(b), so we're seeking to exclude or
11 prohibit him from testifying about s-2(a). The concern is it's
12 going to further confuse the jury here if he's testifying about
13 industry standards and practices with respect to s-2(a) when
14 this is a trial entirely about s-2(b).

15 THE COURT: Okay. Thank you.

16 Who's talking about --

17 MR. PETERSON: Your Honor, our position -- and this is
18 really both with Mr. Binder and Mr. Kelly, two of our three
19 experts. And, again, we had a long conversation with Mr. Sabido
20 about this, but it gets back to a mischaracterization of what
21 both the testimony is and what the argument is.

22 It doesn't have to do with s-2(a) versus s-2(b). It
23 has to do with -- what our experts are testifying about is that
24 a reasonable investigation in this case is for Wells Fargo to
25 look at its system of record, look at the information that it

1 has. And so the testimony is, that if that information would
2 have come in, the additional stuff they would have asked for,
3 that would become part of the system of record and, therefore,
4 that information would have been part of what could be used to
5 verify.

6 And so what our experts will testify to is that
7 looking at your internal information is a reasonable
8 investigation, and as part of that reasonable investigation, it
9 includes everything you pull in about that defendant, whether or
10 not it comes from the fraud department as a result of a direct
11 report or other sources. It's what becomes part of the system
12 of record that Wells Fargo then looks at to verify or not verify
13 the identification.

14 And so our position is that the testimony that
15 Mr. Binder and Mr. Kelly are giving on those topics is very
16 relevant and admissible.

17 THE COURT: The other objections regarding Binder had
18 to do with speculation about what would happen if the plaintiff
19 had sent Wells Fargo information it requested, and to the extent
20 he's speculating, I'm not going to allow him to do that.

21 And then, finally, there was an objection regarding
22 damages in that Mr. Binder isn't qualified regarding the issue
23 of damages. And, again, I tend to agree with plaintiffs on that
24 point.

25 As regards to the other objection, whether or not he

1 gets to testify at all because of the possibility he might be
2 addressing s-(2)(a), that objection is overruled.

3 MR. PETERSON: Your Honor, can I briefly address the
4 damages piece?

5 THE COURT: Sure.

6 MR. PETERSON: So one of the arguments that he'll
7 make, what he'll -- not arguments, what he'll describe to the
8 jury, what he will inform them on is what effect a negative
9 report has on a person's credit, and that will go directly to
10 providing the jury with a basis for what are reasonable damages
11 in this case.

12 Mr. Binder will be able to explain, here's
13 what -- when this derogatory report from Wells Fargo showed up
14 on Mr. Sponer's report, here is how that affected him, here's
15 how that affected his credit. And then the jury will be able to
16 decide, based in part on that testimony, whether or not the
17 damages he's requesting in relation to the actual harm, whether
18 those are reasonable.

19 So with respect to damages, I think Mr. Binder's
20 ability to testify about what actually happens with these
21 derogatory reports is an important piece of information for the
22 jury to have.

23 THE COURT: Thank you.

24 Do you want to respond?

25 MR. SAND: Yeah. Real quickly, Your Honor.

1 Mr. Binder's testimony is primarily that plaintiff did
2 not apply for credit. That's not something that we need expert
3 testimony on to introduce into evidence. It's not a matter of
4 expert testimony. The fact that he didn't apply for credit
5 during that time period is not something that we need Mr. Binder
6 to explain to the jury with any degree of expertise or need for
7 expertise.

8 THE COURT: What about the other part where they're
9 saying that he's going to be testifying as to what happens with
10 the actual reports and that's relevant to determine what damages
11 Mr. Sponer may have suffered?

12 MR. SAND: I'm not sure that he gets into that degree
13 of nuance with it. I think it boils down to essentially he did
14 not apply for credit, and as a result, Mr. Binder's opining that
15 he was not damaged from a creditworthiness standpoint.

16 THE COURT: Well, and you're also seeking damages
17 because his reputation was affected as well. It sounds to me
18 like what Mr. Binder is testifying may be relevant to that point
19 as well, in other words, what actually happens to these things.

20 The objection on that point is overruled.

21 MR. SOLA: Your Honor, if we could just maybe -- I
22 think we're all agreed, he can't go beyond what he's stated in
23 his report. Is that fair?

24 THE COURT: You're asking me about your own --

25 MR. SOLA: I'm sorry. Okay. You've got to wait for

1 trial for that. I just thought it might clear up -- because,
2 you know, there was sort of an argument about what he was going
3 to testify to. But we'll just reserve that.

4 THE COURT: The other thing I would caution the
5 defense about is you're being very careful and surgical, I might
6 say, in making sure that the s-2(a) information is limited. I
7 don't know what your experts are going to say, but it may well
8 be, by the time they're finished testifying, that they have
9 opened the door to the entirety of that provision, and I will be
10 listening carefully to see whether or not that door has been
11 opened or not.

12 MR. PETERSON: Thank you, Your Honor.

13 THE COURT: As regards Brian Kelly, do I need
14 to -- based on what I've already told you, is that something I
15 need to spend more time with? Or do you have an understanding
16 based on what I've already said about what my expectations are?

17 MR. PETERSON: Your Honor, I think there's one
18 additional objection they made to Mr. Kelly's testimony. I'll
19 let Mr. Sola correct me if I'm wrong, or Mr. Sand, but I think
20 they objected to his introduction related to just identity theft
21 in general. I think if you'll review Mr. Kelly's credentials,
22 he certainly has enough experience in his decades in the credit
23 industry to discuss the problem of identity theft in general
24 terms.

25 THE COURT: Okay.

1 MR. SAND: Your Honor, it's precisely the introduction
2 of his expert report where he discussed things about a supposed
3 cottage industry of credit repair organizations and
4 industry-wide identity theft procedures. I think he quotes a
5 website from an insurance company regarding identity theft.

6 More importantly, though, at his deposition, he
7 conceded that identity theft specifically is not an area for
8 which he considers himself an expert. He does in credit
9 reporting, banking, I believe it is. But all the -- that entire
10 introduction would be subsumed within that identity theft
11 expertise that he's conceding he doesn't have.

12 THE COURT: Thank you.

13 The objection is overruled.

14 That takes care of Mr. Kelly.

15 MR. PETERSON: Yes, Your Honor.

16 THE COURT: We're at Jose Santana. I think we've
17 already talked about Mr. Santana.

18 Certainly, much of his testimony is not relevant,
19 particularly about all the great things that Wells Fargo has
20 done in the community.

21 The question to me isn't that. The question is
22 whether or not he gets to testify, and we're kind of back to
23 where we were before where you have witnesses that
24 the -- Mr. Sponer, the plaintiff in this case, is learning about
25 late and then some confusion regarding what -- or disagreement

1 regarding what the stipulation regarding Wells Fargo's finances
2 were, what the stipulations were or was, and what it meant, and
3 whether or not Mr. Santana's testimony was precluded based on
4 that stipulation.

5 I don't find that the stipulation precluded
6 Mr. Santana from testifying. However, I've already stated that
7 much of his testimony is irrelevant and should be excluded, and
8 that has to do with the topics that I've already mentioned.

9 I also believe it important that Mr. Santana be made
10 available to the plaintiffs should they choose to depose him
11 ahead of time.

12 Let's move on.

13 Megan Braxton, do we need to talk any more about Megan
14 Braxton or John Cooper? I think we've already resolved those
15 issues.

16 Now we're to deposition designations. Oh, my
17 goodness. Get your pencils out.

18 Let's see. Montressa Ebron, Brian Funsch, Ashley
19 Grier, Colin Hollomon, all the way down to Celestina Gobin, all
20 of those objections are overruled.

21 Then Celestina Gobin, I want -- you have the same
22 chart I do. The objections where it says "Plaintiff's
23 designation," and then it begins with page 35 and above, those
24 are the first two blocks for Celestina Gobin, yes, those are
25 overruled.

1 And then pages 46, 47, and 51, those objections are
2 sustained. That's Berg.

3 Pages 35, line 11, and page 60, lines 1 through 3, the
4 objections are sustained; otherwise, overruled.

5 Page 43, 11 through 13, the objection is sustained;
6 otherwise, overruled.

7 Page 58 and below, overruled.

8 And all the rest of the objections are overruled.

9 MR. SOLA: Your Honor, can I just ask
10 about -- Ms. Gobin was 46, 47, and 51. And that's because they
11 were leading questions? I mean --

12 THE COURT: Ms. Gobin, I didn't -- I overruled all of
13 the objections.

14 Oh, I'm sorry.

15 MR. SOLA: I thought I heard you --

16 THE COURT: No, no. You're correct. You're correct.
17 46, 47, and 51, they were leading questions. The objection was
18 to form of the question. Those objections were sustained.

19 MR. SOLA: Okay. So I mean -- so your ruling is they
20 weren't an adverse party? I mean, we get to ask -- the Rule
21 611, I believe, says an adverse party, you can ask leading
22 questions. They were the defendant in the case and now you've
23 actually indicated that you may let the jury hear they were
24 defendant.

25 THE COURT: Let me look. I might have mismarked that.

1 Do you remember if that was in the first or second
2 notebook?

3 MR. SOLA: Second notebook.

4 THE COURT: Thank you.

5 I'm wrong on that one, at least as regards 46, 10
6 through 23.

7 Let me look at 47.

8 MR. SOLA: Your Honor, 47, they didn't object.

9 Oh, no. I'm sorry. They didn't object on 46 and 51.
10 And then my argument was, on 47, that they weren't leading. Of
11 course my primary argument is I could lead because they were an
12 adverse party.

13 MR. FRANSEN: And I'd just point out they weren't
14 adverse anymore. They had settled with Equifax and one of terms
15 of the settlement was --

16 THE COURT: That's what it was. That's what it was.

17 Were they still adverse parties with Equifax? Equifax
18 had already settled when you took the deposition; right?

19 MR. SOLA: They had, Your Honor. I don't think that
20 eliminates them as an adverse party. I mean, when people
21 settle, they don't become friends.

22 But even so, first, they didn't object on 46 and 51,
23 so they waived it.

24 THE COURT: Okay. What do you want to tell me about
25 that one? There was no objection for leading.

1 MR. FRANSEN: Some of them -- some of them, there are.
2 But the two -- just the ones he's talking about?

3 THE COURT: Yeah. 46 and 51. And then he says there
4 was an objection on 47, although, let me look because I don't
5 know if I see it.

6 Yeah, there was an objection on that one.

7 Actually -- go ahead.

8 MR. FRANSEN: I'd just say the transcript does not
9 contain an objection. I can't tell you for sure if -- this was
10 a deposition done via telephone. Nobody was in the same room.
11 So I can't say for sure that there's an objection that wasn't
12 caught. I can't say that. But it's not in the transcript;
13 so --

14 I still think they're leading questions and, objection
15 or not, they're inappropriate.

16 THE COURT: Did you make the standard stipulations at
17 the beginning of your deposition which says you object to the
18 form of the question and all other objections are reserved?

19 MR. FRANSEN: Did we do that at the beginning of
20 the --

21 THE COURT: Deposition. I assume that that's what you
22 did. I was operating under that assumption.

23 MR. SOLA: Well, Your Honor, leading, that's a form
24 objection.

25 THE COURT: I'm kind of with you this -- right now.

1 Settle down over there. I'm agreeing with you right now.

2 Is that correct?

3 MR. FRANSEN: Is it correct that that was -- that
4 stipulation was made?

5 THE COURT: Yeah. Because otherwise you waived all of
6 your objections. So I assume you made those objections, or you
7 made that stipulation.

8 MR. FRANSEN: I don't think we made that stipulation
9 at the beginning of the deposition.

10 But our understanding of the rules would be that, for
11 objections that we do make, if there are objections to the form,
12 that's sufficient because the rules don't allow us to make
13 speaking objections --

14 THE COURT: Correct.

15 MR. FRANSEN: -- and interrupt.

16 So from understanding Your Honor, you're going to deem
17 that we've waived the objections were there is no objection on
18 the record.

19 THE COURT: At least not to the -- yeah. On these,
20 you have -- as to the form of the objection. And where
21 you -- on one of these, you did object to the form. It's on
22 page 47. I'll sustain that objection.

23 As regards pages 46 and 51, there is no objection.
24 It's waived.

25 MR. SOLA: Your Honor, if you note, on page 47,

1 actually, the objection is from Equifax's counsel. Okay. I
2 think that supports my argument that it's an adverse party.
3 Just because we settled -- I sued them, and so they have no love
4 for plaintiff.

5 THE COURT: Wait a minute. You made an agreement with
6 Equifax that they were going to cooperate with you and that they
7 were going to testify in order to support your case against
8 Wells Fargo.

9 MR. SOLA: No. We made an agreement that they would
10 give us deposition testimony, and that saved them from having to
11 comply with the subpoena.

12 THE COURT: Yeah. They're not an adverse party
13 anymore. That's part of your deal.

14 MR. SOLA: All right. But my question isn't leading,
15 though, Your Honor. My question is -- let's see. It's 20 to
16 24. "And what about Foremost Insurance? Do you think it could
17 be them?"

18 I don't -- I don't think that's leading. They -- the
19 prior answer was, "I know it's an insurance company because of
20 the IG," which is a code. Okay. So --

21 THE COURT: Hang on just a second. Let me read the
22 whole thing.

23 All right. Is there anything else you want to tell
24 me?

25 MR. FRANSEN: I think we didn't only object to that as

1 leading. It's also speculation. He says -- she's thinking it's
2 an insurance company, and he gives her the insurance company he
3 wants her to say, and she says, "Yeah, that sounds right."

4 THE COURT: Anything else?

5 MR. SOLA: Well -- and, Your Honor, I -- I think
6 "objection to the form" also isn't an adequate objection because
7 it doesn't specify the grounds.

8 As we know, only objections to form can be made, and
9 by saying "objection to form," I'm not apprised -- does he mean
10 compound, leading, calls for speculation, beyond the scope of
11 the designation? And I just think it's too vague to be a proper
12 objection. But -- that's one argument.

13 But the other thing is I don't think it's leading
14 because she said "insurance," and so I just followed up. If I
15 would have pulled that out of thin air, it would be leading.

16 THE COURT: Yeah. All of the -- you have a lot of
17 leading questions in your examination because the one before
18 that is leading. But this one was not. I agree with you.

19 When you say, "So it's an insurance company because of
20 the IG; right?" and she answers, "Correct," that part is
21 leading. That starts at 17 and goes to 19. But I don't know if
22 that's the part they're objecting to. They're objecting to 20
23 to 24.

24 I will overrule that objection. It's a close call. I
25 don't know that it's speculation. It's not leading. Okay.

1 MR. SOLA: Can we talk about Bets Berg, too,
2 Your Honor?

3 THE COURT: Sure.

4 MR. SOLA: So I don't know I heard everything, and I'm
5 sorry to make you repeat it.

6 But you sustained -- was it page 35? Maybe you can
7 tell me and then I can address it.

8 THE COURT: 35, 11, line 11.

9 MR. SOLA: 35, 11.

10 THE COURT: Actually, it looks like it was 34, 22,
11 through 35, line 11.

12 MR. SOLA: All right. I won't contest that then.

13 And 43, 11 through 13; is that right?

14 THE COURT: Yes.

15 MR. SOLA: All right. And on what ground is the
16 objection being sustained?

17 THE COURT: You're at 43, 11 through 13?

18 MR. SOLA: Yes.

19 THE COURT: Hang on.

20 Hearsay.

21 MR. SOLA: Well, these are from the note -- well, I
22 guess that -- okay. So just 11 to 13?

23 THE COURT: Yeah.

24 MR. SOLA: Okay. I won't contest that.

25 And was there one other one on Berg you sustained?

1 THE COURT: Yeah. 60, 1 through 3.

2 MR. SOLA: 60, 1 through 3. Okay. And what's your
3 basis?

4 THE COURT: She doesn't have personal knowledge of
5 this. The only reason she knows is because she was told or
6 learned it through hearsay.

7 MR. SOLA: Okay. That's not offered to prove the
8 truth. That's offered to prove they were told he was guilty,
9 which is really, actually, more important for my case,
10 Your Honor. It's not so much that Wells Fargo knows there's
11 identity theft, although it's important, it's that they're told
12 by the police that there's identity theft, which is equivalent
13 to proof it's identity theft.

14 THE COURT: Well, that's not the way you asked your
15 question.

16 MR. SOLA: Okay.

17 THE COURT: By the way, this particular point is going
18 to be established numerous times over -- through other evidence,
19 I suspect.

20 MR. SOLA: Yeah.

21 Do you mind if I ask some tangential questions? I
22 know it's been a long day.

23 THE COURT: We're just warming up. We've got more to
24 go.

25 MR. SOLA: It is, you know, that -- my beef about

1 objection to the form. I'd love to hear a federal judge tell me
2 if there's any basis, you know, for that, but you don't have to
3 do it now.

4 THE COURT: Okay. We'll talk about that after the
5 trial is over and you know my philosophy on form of the question
6 or not.

7 Anything else that we need to talk about regarding
8 those witnesses? I don't know if I got through all the
9 witnesses or not.

10 MR. FRANSEN: I think you did get through all the
11 deposition designations and the witnesses.

12 THE COURT: Okay. I'd like to think my work is done,
13 but, wait, there's more.

14 Motion to supplement exhibit list filed by the
15 defense.

16 And you -- did I just get a response this afternoon
17 from plaintiff, I think? Right? Or Friday.

18 MR. JONES: Friday.

19 THE COURT: I didn't see it until this afternoon.

20 That's not a criticism, by the way, but I just got it
21 recently.

22 So remind me, because you're right, it has been a long
23 day. Is there anything in here that's harmful to you in their
24 supplemental documents?

25 MR. SOLA: It does talk about identity theft disputes.

1 I mean, I didn't really -- I really can't answer that,
2 Your Honor. I'm sorry. But it's just that I never got a chance
3 to question them about it.

4 And you were very strict in your scheduling order.
5 You said anything supplemented, you need good cause. That was
6 covering things that had been produced. Right? This wasn't
7 even produced.

8 So I just don't see the good cause. They don't even
9 try to say good cause. They say it was inadvertent. And,
10 actually, no one from Wells Fargo says that. We don't have an
11 affidavit or declaration; we have the lawyer.

12 So I just think that based on, you know, the rules,
13 and the discovery rules in your own order, it shouldn't come in.
14 I'm greatly prejudiced because I would have questioned about it.

15 I do think it harms me because it's one more thing
16 they can point to. And I don't mean "I do think." It does harm
17 me because it's one more thing to point to to say "We have good
18 procedures."

19 MR. FRANSEN: Your Honor, I'd point out -- and
20 certainly if you have any other questions about it, I'm happy to
21 respond.

22 But we agreed to make a witness available before we
23 got to court to talk about these policies, and Your Honor's just
24 instructed us we need to make that same exact witness available
25 to testify just more generally if we want to call her at trial.

1 So if their harm is that they didn't get to ask deposition
2 questions, that's going to be addressed by the proposal we
3 already made and then your order just now.

4 THE COURT: Who is the witness?

5 MR. FRANSEN: Megan Braxton.

6 THE COURT: And she's the one that's taking somebody
7 else's place; is that right?

8 MR. FRANSEN: She's taking Bets Berg's role. And
9 these are specific to that department at Wells Fargo.

10 THE COURT: All right. Anything else?

11 MR. FRANSEN: Well, you know, Your Honor, we
12 acknowledge these should have been produced before. There is no
13 question of that. They're relevant. But they don't harm the
14 plaintiff.

15 And I hope it's made clear in our briefing, but Bets
16 Berg, even though she was mistaken in her deposition about all
17 policies having been provided, which is clear because she said
18 that and it's here, she testified about the content of these
19 policies. So she did -- she did know about what they would say,
20 she just didn't understand that the written documents weren't a
21 part of the case at that point, or at least that's what we
22 understand the facts to be.

23 So there's nothing, to my knowledge, that's actually
24 new about these policies, it's just simply this is the written
25 form.

1 We submit that, even though it's irregular to allow
2 exhibits in that weren't produced during the discovery -- before
3 the discovery deadline, it's helpful to the jury here. They're
4 going to hear about the policies and they're also going to get
5 to see them.

6 MR. SOLA: Your Honor, I took that deposition. She
7 did not refer to any other policies like these at all. And I
8 was very clear. They produced about 40 pages of records, and I
9 said, "Are these pages that you produced all the policies that
10 Wells Fargo has on handling consumer disputes?"

11 And she says at that time, or general. Then she goes,
12 "There were other ones, but they're not relevant to the case."

13 "Well, are there any other policies or procedures that
14 relate to credit bureau disputes than these?" And I'm talking
15 about the documents they produced.

16 "I believe that there could be other procedures that
17 are related to credit bureau disputes, yes, but were not
18 relevant to this case. They did not -- they don't have anything
19 to do with identity theft procedures."

20 That's totally false. Whether it was inadvertent or
21 intentional, I stopped seeking any procedures because I took
22 that as true. And now the first page of their procedures says
23 "Fraud disputes" and talks about identity theft.

24 So, you know, I -- they shouldn't get away with this.
25 It's just that simple. They shouldn't get away with withholding

1 documents, saying they don't exist, and then offering them on
2 the eve of trial.

3 THE COURT: What happened?

4 MR. FRANSEN: The best we can tell -- and obviously
5 I'm a little cognizant about any attorney-client privileged
6 information. But there is a department within Wells Fargo, or a
7 team, that's responsible for managing and maintaining policies
8 and procedures and keeping track of when they change so that you
9 can get old versions of them, and they are tasked with gathering
10 them when a discovery request comes in. Obviously discovery
11 requests for Wells Fargo policies and procedures come in. They
12 gather the information.

13 I don't know sitting here today why they didn't gather
14 this, but they didn't gather these in their original set. The
15 set that we produced and that the witness testified about under
16 deposition, Bets Berg, didn't notice that they were missing
17 either.

18 So plaintiff's counsel says we withheld them. Well,
19 we didn't withhold anything intentionally. Certainly there's a
20 mistake -- obviously a mistake had to have been made for these
21 to not be --

22 THE COURT: So how did you -- what made you go back to
23 Wells Fargo and look? I mean, what triggered them suddenly
24 finding these documents?

25 MR. FRANSEN: Part of our preparations for trial.

1 THE COURT: So explain that to me.

2 MR. FRANSEN: Well, I don't know how much -- I don't
3 know that I can.

4 THE COURT: Did you direct them to go back and look
5 again to make sure that you had all the documents, and then
6 that's when they found them? And if you can't tell me, that's
7 fine.

8 MR. FRANSEN: No, I can. There's two parts to it.

9 One, they filed a motion, and you remember the
10 discussion, you were saying -- this was their motion in limine
11 number 7, and you said, "Well, was there some procedure you were
12 thinking of?" and they said, "No," and it turned out there was
13 one. But -- so there was a motion they filed that made us
14 consider do they know something we don't know.

15 And then also, in preparing for trial with trial
16 witnesses and going over exhibits with those witnesses, that's
17 when we first got the idea that something may have been missing,
18 and then immediately went back, said something might be missing,
19 immediately found something was missing, immediately got the
20 correct version of that and immediately produced it.

21 I think -- and I think I'm -- I think within 48 hours
22 of having the policies, they were in plaintiff's hands as well.
23 And a day after that, we said, "If you want to talk to Megan
24 Braxton about these, we'll make her available in person in
25 Portland, we'll fly her out here specifically for that."

1 THE COURT: Megan Braxton is coming out here?

2 MR. FRANSEN: We had -- I'm sorry. I don't mean to
3 confuse things.

4 She had been disclosed as our trial witness already,
5 obviously, and we're cognizant of the fact that they did not get
6 to ask Bets Berg about these policies, so we said we would bring
7 Megan Braxton out. We thought an hour would be sufficient. But
8 we said we'll bring her out, and we gave them three days that
9 she'd be able to come out here and do it. They didn't respond
10 to that request. Their tactic, instead, is to say you simply
11 can't bring the documents into evidence.

12 But now Your Honor has already directed us to make
13 Megan Braxton available anyway for general purposes, and those
14 can include talking about these policies and procedures.

15 THE COURT: Thank you.

16 Do you want to pop up again?

17 MR. SOLA: I do, unless you're going to deny --

18 THE COURT: No. go ahead.

19 MR. SOLA: Okay. A couple things.

20 They haven't shown good cause, and that's what you
21 were searching for. How did this happen? They haven't shown
22 good cause.

23 In fact, what it sounds like is they didn't really
24 care in discovery to look for all the procedures, even though
25 they're obligated to, but then when it came to trial

1 preparation, they wanted to find some procedures they could use
2 to defend this case and so they found what they should have
3 given us months ago, you know, and that's not how the federal
4 rules of discovery work, and it's certainly not the spirit.

5 And, you know, offering me a deposition, the deadline
6 for discovery closed in February, Your Honor. They invited me
7 to violate your order, the way I read that. Do you want to take
8 a deposition after the deadline is disclosed? I'm not going to
9 violate an order on discovery. So we didn't respond to that.

10 Finally, these documents themselves refer to documents
11 we do not have, Your Honor. So these, by themselves, aren't all
12 the procedures. There's something called a "handle fraud
13 disputes dealer service process map." We don't have that. That
14 wasn't produced.

15 So I'm really handicapped even if I were to depose her
16 on these.

17 THE COURT: Thank you.

18 I'm going to reserve ruling on the exhibits. I want
19 you to depose her, ask her anything you want about those
20 exhibits, and then I'll let you know after I hear back from you
21 what I'm going to do about the supplemental exhibit list.

22 MR. FRANSEN: Thank you, Your Honor.

23 THE COURT: Is that -- so that's all of my to-do list
24 that I have for this afternoon. That was kind of on the motions
25 side of things.

1 I want to spend a couple minutes explaining to you
2 what the trial will look like. But before I do that, I want to
3 make sure there isn't anything that I missed from any of your
4 perspectives.

5 Let me turn first to the plaintiff.

6 Are there any other rulings that were before the Court
7 that I have not already addressed?

8 MR. SOLA: Not that I'm aware of. We have a couple
9 things we do want to bring up.

10 THE COURT: I'll give you a chance to do that. Let me
11 just make sure that I've got everything that kind of was on my
12 table.

13 MR. PETERSON: Your Honor, the only things that
14 are -- were part of the order for this conference were the
15 proposed voir dire questions and technology issues. I don't
16 know if you're planning to handle those.

17 THE COURT: I've read the voir dire questions, and
18 generally they seem fine to me. I don't think that any of the
19 questions that I looked at seem particularly out of line. We'll
20 talk about how the process is going to look.

21 MR. PETERSON: Could I raise an issue with just two of
22 plaintiff's questions?

23 They asked a couple of questions about if anyone is
24 related to someone who's worked for a collection agency or
25 collection department, and also for anyone who worked in

1 accounts receivable.

2 Our only concern with that is -- you know, this is not
3 a Fair Debt Collection Practices Act case, and we have some
4 level of concern that by raising those issues, have you worked
5 for a credit agency, have you done collection work, that that
6 might make the jury think this is a case about something that's
7 it's not about.

8 THE COURT: Okay. Yeah. I'm going to ask that
9 question or something related. I typically don't ask the
10 questions exactly like the parties ask me to proffer them. I
11 change the language, not in all of them, but some of them,
12 they'll sound a little bit different --

13 MR. PETERSON: Okay.

14 THE COURT: -- to you. But I will ask that. I will
15 ask those questions.

16 Okay. So other than that, was there anything else on
17 the table that you thought I needed to address?

18 All right. So then let's get to the plaintiff's other
19 things you want me to think about or consider.

20 MR. SOLA: Okay. Well, first, it sounds like we're
21 not going to discuss jury instructions today. Is that right?

22 THE COURT: Correct.

23 MR. SOLA: Okay. Because we are trying to do some
24 stipulations, and we may have some new instructions.

25 We have a question about Wells Fargo designated more

1 than 40 -- what they called impeachment exhibits, and that means
2 we don't get to see them. And I'm really puzzled how they can
3 have 40 or more impeachment exhibits, and I have a concern that
4 they're actually rebuttal exhibits.

5 Like, something I might think of is they want to show
6 he wasn't damaged because they've got a photograph of him off
7 Instagram where he's doing something fun, you know, and that
8 would be rebuttal, not impeachment. And I know you -- I guess
9 you get to look at them.

10 But if these are actually rebuttal exhibits, we are
11 severely prejudiced because we don't get to see them until the
12 moment they're used. And so I guess I'm asking the Court to
13 look at these impeachment exhibits and determine if they are
14 rebuttal exhibits, and if they are, not to allow them because
15 then they should have been produced with the third wave.

16 THE COURT: Thank you.

17 Is there anything you want to say about that?

18 I haven't looked at the exhibits because I had enough
19 to kind of work through without getting to the impeachment
20 exhibits.

21 MR. PETERSON: Just very briefly, Your Honor.

22 Every exhibit we identified, we will ask the witness a
23 question, you know, "Is it true that X happened?" And if they
24 give the right answer, the true answer, we won't use the
25 exhibit. If they say something else, we'll use the exhibit.

1 That, to me, is the definition of impeachment. If I'm
2 incorrect on that definition, then I'd appreciate the head's up,
3 and if we need to add something else -- but I think impeachment
4 goes not just were you lying about being damaged because you
5 were off having fun on Instagram, it goes with I ask a question,
6 did you send -- "Did the identity thief also open ten other
7 credit cards for you?" And if Mr. Sponer says, "No," I think if
8 I have an exhibit that says, well, you complained about -- you
9 know, here's the letters you sent, I think that's impeachment.

10 THE COURT: Okay.

11 Anything else?

12 MR. SOLA: Yes.

13 So in your order, you indicated in the first wave that
14 if both parties want to use a deposition, that they should
15 jointly mark it -- I believe we were in yellow and they were in
16 blue -- and submit it. So I notified them of the depositions we
17 intended to use and said, you know, if you want to use these,
18 notify me so we'll submit a joint marked-up version. They
19 didn't give me any deposition designations.

20 Then, in the third wave, they marked what they call
21 "rebuttal" designations, and I think that's improper, because if
22 they would have done it in the first wave, then I might have
23 been able to object to those designations or offered additional
24 designations to address those.

25 And so I'm asking that you, you know, strike those

1 rebuttal designations because there isn't such a thing. They
2 should have put those in their first wave designations. I've
3 been prejudiced because I couldn't object to them.

4 THE COURT: Do you have objections to their
5 designations?

6 MR. SOLA: I have some objections to them. Should I
7 submit those on paper?

8 THE COURT: Yeah. Let me take a look at them.

9 MR. SOLA: And then would I -- and should I also offer
10 my additional designations? Because that's some way I could
11 address those. And they're not long.

12 THE COURT: It sounds like maybe you should confer
13 with each other. All right? So talk to each other. And if
14 there's some way that you can ameliorate what you're describing
15 as a problem by a more complete disclosure, more complete
16 designation, then resolve it that way.

17 And then if you're unable to resolve it, then send me
18 your -- you know, what it is you want me to get rid of because
19 they didn't give it to you until the third wave.

20 MR. SOLA: All right. Then my final thing is I have
21 some demonstrative exhibits. I suppose what I should do is show
22 them these before trial, see if they object, and then if they
23 do, you would decide?

24 THE COURT: Yeah.

25 MR. PETERSON: We also have demonstrative exhibits and

1 we'll confer.

2 THE COURT: Yeah. Nowadays, everybody is using
3 technology with all kinds of charts and arrows and circles and
4 demonstrative exhibits during opening statements and closing
5 arguments. It's helpful if you share them with each other so we
6 don't get in the middle of a statement and me having to tell
7 somebody to turn it off.

8 Anything else from plaintiff's perspective?

9 MR. SOLA: Just as you listed, technology. You know,
10 how are we going to -- when we discuss that.

11 THE COURT: So this isn't Jennifer. Jennifer usually
12 works for me. This is Mary, she works for Judge Simon, and I'm
13 borrowing her today.

14 But Jennifer's going to be here I think -- is she back
15 this week or next week?

16 She's not back until next week. And you're going to
17 need to get in here to kind of -- do you plan on coming in here
18 this week sometime in order to try things out?

19 MR. SOLA: Yes, we would, if we could -- if you could
20 just give us a number or name to call.

21 THE COURT: Okay. So check with -- can they check
22 with you?

23 THE CLERK: Yeah.

24 THE COURT: Okay. So check with Mary and she can help
25 you out on that. That's kind of outside my expertise.

1 MR. PETERSON: And we'll also want to come in and make
2 sure everything works.

3 THE COURT: Yeah. And then when you get here, even
4 though it worked when you tried it, it won't work.

5 All right. Anything else from your side?

6 MR. SOLA: No, Your Honor.

7 THE COURT: All right.

8 MR. PETERSON: I don't believe there's anything
9 else -- oh.

10 MR. SOLA: Well, the question was -- well, first, let
11 me clarify. Are you allowing Braxton and Cooper? Or is that
12 going to be reserved until after we --

13 THE COURT: No, I'm allowing them to testify, and you
14 get to take their depositions. The only issue that I'm kind of
15 holding off on is whether these exhibits are going to be
16 admitted or not. I'm going to give you a chance to talk to them
17 and go ahead and do your deposition with them. And I want to
18 think about these exhibits and what they say. I haven't looked
19 at them carefully.

20 MR. SOLA: Okay. And can we use the depositions that
21 we're taking at trial, even if they call that person?

22 THE COURT: For impeachment purposes?

23 MR. SOLA: No. For any purpose. Because I think they
24 established these are 30(b)(6) people, at least Braxton. Well,
25 and Cooper.

1 THE COURT: You can use their depositions in any way
2 that you would otherwise be able to use their depositions.

3 MR. SOLA: Okay.

4 THE COURT: Okay. Anything else?

5 MR. SABIDO: Your Honor, there's one other item on the
6 trial management order, and it has to do with settlement and
7 mediation efforts. I don't know if you would like us to go into
8 that now or save it for a different time.

9 THE COURT: What is it you want to tell me?

10 MR. SABIDO: I think it's well-chronicled. We filed a
11 motion to set a settlement conference in this case back in May
12 of this year and the Court denied that for the reasons given in
13 its order. I just want to point out that, ever since then,
14 three offers of judgment in substantial amounts have been served
15 and we've gotten no response to it.

16 THE COURT: Okay. That's just a matter of
17 recordkeeping. That's fine.

18 Anything else?

19 Let's talk about how we're going to try the case.

20 I will put into the jury box 16 jurors.

21 Can't remember. Did we use the -- I moved from one
22 courtroom to the other and I'm still trying to adjust.

23 I believe our Juror Number 1 -- is it the back row?

24 THE CLERK: I think it's the back row from what --

25 THE COURT: Yeah. It's the back row. So 1 through 8,

1 9 through 16 in the front row.

2 I will then put the balance of the jurors, beginning
3 to my left, that will be Juror Number 17, 18, 19, 20, et cetera,
4 in my gallery.

5 There are a series of biographical questions that I
6 ask all of the jurors to respond to. Get a copy of those before
7 you leave so you know what they are.

8 But they have tell us your name, where you live
9 generally, what your occupation is, who you live with, what are
10 the occupations of the people that live with you, your level of
11 education, have you been involved in a jury before as a witness
12 or a party, whether you have prior jury experience. I think
13 that's it as far as biographical questions.

14 After I do the biographical questions, I'll turn to
15 your questions. And after I have completed your questions, I
16 will ask each of you whether you have follow-up questions.

17 I will then have Jennifer -- first, I will ask each
18 side whether you are -- have any challenges for cause, and then
19 I will ask each side to begin to exercise their preemptory
20 challenges. Jennifer will go to the plaintiff first, and she'll
21 just have a sheet of paper that lets you pick who to deselect
22 from the pool, and back and forth until you've used your
23 challenges.

24 We will seat -- actually, this is a civil case, so
25 we're going to be seating eight jurors and we won't use any

1 alternates. It will just be eight jurors.

2 MR. SOLA: Your Honor, is that -- I mean, I would
3 prefer six with two alternates, if you would entertain that.

4 THE COURT: See, it doesn't really matter because
5 there's eight of them. And so if somebody gets sick, I excuse
6 that person. Then they proceed with seven. If somebody else
7 gets sick, then they proceed with six; so --

8 MR. SOLA: But if all eight stay, then they all
9 deliberate?

10 THE COURT: They all deliberate, and eight -- your
11 jury is a jury of eight.

12 MR. SOLA: All right.

13 THE COURT: All right. So I guess from your
14 perspective, it might -- you would rather try to convince six
15 than eight.

16 MR. SOLA: That's right. And I know you have
17 discretion there, so I would ask that we have six.

18 THE COURT: We're going to use eight.

19 All right. Anything else on kind of that part of the
20 process?

21 I usually have a jury -- in this case,
22 eight -- probably by 11:00. So be ready for opening statements
23 in the morning. I would have at least one witness available as
24 well.

25 You have four days to try this case. I generally get

1 about five hours of trial testimony a day, is what it averages
2 out to. I'm going to divide the time in half. So that means
3 each of you will have about ten hours for your case. I don't
4 count opening statements and I don't count closing arguments.
5 But other than that, the check -- the chess clock is running.

6 Claire is the official keeper of the clock.

7 Any questions about that process?

8 And then other than that, do you all have any
9 questions about --

10 MR. PETERSON: Your Honor, just --

11 THE COURT: -- what the trial is going to look like?

12 We'll have a lectern out here for your opening
13 statements.

14 MR. PETERSON: And then what about a -- getting back
15 to the technology issue -- a screen? Or how are the -- we could
16 bring in a screen. Or how are the exhibits projected to the --

17 THE COURT: So the jurors all have screens in front of
18 them. And so it -- it's called a jury -- I don't know -- jury
19 something screen. Jury evidence screen, I think. And so, yeah,
20 they can just look at them, and when you put them up there,
21 they're going to be on their screen.

22 MR. PETERSON: And that will work for demonstratives
23 as well?

24 THE COURT: Yeah. I'm not exactly sure how it works.
25 But people use their laptops, they hook them up somewhere --

1 MR. PETERSON: Something happens.

2 THE COURT: -- and then they pop up on my screen and
3 all of their screens and that large screen there as well.

4 MR. PETERSON: Okay. And then, Your Honor, one
5 clarification with Mr. Brady. He was the person who we objected
6 to their use of his deposition transcript because he will be
7 here live as a testifying witness. He is coming from North
8 Carolina.

9 You said if -- I'm not sure what we're going to do
10 about his deposition transcript, but you said he would have to
11 be here as part of their case-in-chief. Can we have him come
12 at -- towards the end of their case-in-chief? Or does he need
13 to be here from the start of trial if we want to prevent them
14 from using his deposition --

15 THE COURT: Deposition testimony?

16 MR. PETERSON: In other words, could we have him be
17 here by, say, Tuesday afternoon for them to finish their case?

18 THE COURT: I'd get him here Tuesday morning.

19 MR. PETERSON: Okay.

20 THE COURT: You'll have him by Tuesday morning.

21 MR. PETERSON: Okay. Thank you, Your Honor.

22 Does that work?

23 MR. SOLA: Well, I hope you can just agree to use his
24 deposition.

25 MR. PETERSON: Well, we'll see.

1 THE COURT: Any other questions about the process?

2 MS. SMITH: When do you expect to talk about jury
3 instructions?

4 THE COURT: I will have a draft of the jury
5 instructions based on what I think the law is to you hopefully
6 by the end of your second day.

7 MS. SMITH: Okay. Thank you.

8 THE COURT: And I saw all your witness lists. I can't
9 remember how many you're calling. Maybe ten witnesses. Is that
10 what it looks like?

11 MR. SOLA: Well, if you count the deposition excerpts,
12 then it's -- yeah, it's -- I think it's more than ten.

13 THE COURT: I want live witnesses.

14 MR. SOLA: Live witnesses, you're allowing -- I'm
15 sorry. We all forgot the rulings. Ms. Barron, you're allowing,
16 but they can depose her. So five.

17 THE COURT: Okay. All right. So you'll get through
18 your case pretty quickly then. We may be done in a day and a
19 half.

20 I'm not -- you don't -- you have ten hours, so you can
21 spend it however you want.

22 MR. SOLA: No, I know. It's -- yeah. I hope we do.
23 I really do. But then I have to read the depositions, and I
24 want to -- or play them. So that's going to add on too.

25 THE COURT: Okay, okay, okay. All right. So it will

1 probably take you two days for your part of the case.

2 Okay. Anything else from your side? Any other
3 questions?

4 MR. PETERSON: I don't believe so, Your Honor.

5 THE COURT: Thank you. Then we're in recess.

6

7 (The proceedings concluded at 4:19 p.m.)

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C E R T I F I C A T E

I certify, by signing below, that the foregoing is a true and correct transcript of the record, taken by stenographic means, of the proceedings in the above-titled cause. A transcript without an original signature, conformed signature, or digitally signed signature is not certified.

DATED this 20th day of August, 2019.

// Ryan White

RYAN WHITE

Registered Merit Reporter

Certified Realtime Reporter

Expires 9/30/2019

Washington CCR No. 3220

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